

### **31A-23a-101. Purposes.**

The purposes of this chapter include:

- (1) promoting the professional competence of insurance producers, surplus lines producers, limited line producers, consultants, managing general agents, and reinsurance intermediaries;
- (2) providing maximum freedom of marketing methods for insurance, consistent with the interests of the Utah public;
- (3) preserving and encouraging competition at the consumer level;
- (4) regulating insurance marketing practices in conformity with the general purposes of this title;
- (5) governing the qualifications and procedures for the licensing of insurance producers, surplus lines producers, limited line producers, consultants, managing general agents, and reinsurance intermediaries; and
- (6) promoting uniform licensing requirements between the several states.

Amended by Chapter 253, 2012 General Session

### **31A-23a-102. Definitions.**

As used in this chapter:

- (1) "Bail bond producer" is as defined in Section 31A-35-102.
- (2) "Home state" means a state or territory of the United States or the District of Columbia in which an insurance producer:
  - (a) maintains the insurance producer's principal:
    - (i) place of residence; or
    - (ii) place of business; and
  - (b) is licensed to act as an insurance producer.
- (3) "Insurer" is as defined in Section 31A-1-301, except that the following persons or similar persons are not insurers for purposes of Part 7, Producer Controlled Insurers:
  - (a) a risk retention group as defined in:
    - (i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;
    - (ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and
    - (iii) Chapter 15, Part 2, Risk Retention Groups Act;
  - (b) a residual market pool;
  - (c) a joint underwriting authority or association; and
  - (d) a captive insurer.
- (4) "License" is defined in Section 31A-1-301.
- (5) (a) "Managing general agent" means a person that:
  - (i) manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office;
  - (ii) acts as an agent for the insurer whether it is known as a managing general agent, manager, or other similar term;
  - (iii) produces and underwrites an amount of gross direct written premium equal to, or more than, 5% of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year;

- (A) with or without the authority;
- (B) separately or together with an affiliate; and
- (C) directly or indirectly; and
- (iv) (A) adjusts or pays claims in excess of an amount determined by the commissioner; or

- (B) negotiates reinsurance on behalf of the insurer.

(b) Notwithstanding Subsection (5)(a), the following persons may not be considered as managing general agent for the purposes of this chapter:

- (i) an employee of the insurer;
- (ii) a United States manager of the United States branch of an alien insurer;
- (iii) an underwriting manager that, pursuant to contract:
  - (A) manages all the insurance operations of the insurer;
  - (B) is under common control with the insurer;
  - (C) is subject to Chapter 16, Insurance Holding Companies; and
  - (D) is not compensated based on the volume of premiums written; and
- (iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney.

(6) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning a substantive benefit, term, or condition of the contract if the person engaged in that act:

- (a) sells insurance; or
- (b) obtains insurance from insurers for purchasers.

(7) "Reinsurance intermediary" means:

- (a) a reinsurance intermediary-broker; or
- (b) a reinsurance intermediary-manager.

(8) "Reinsurance intermediary-broker" means a person other than an officer or employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

(9) (a) "Reinsurance intermediary-manager" means a person who:

- (i) has authority to bind or who manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office; and

- (ii) acts as an agent for the reinsurer whether the person is known as a reinsurance intermediary-manager, manager, or other similar term.

(b) Notwithstanding Subsection (9)(a), the following persons may not be considered reinsurance intermediary-managers for the purpose of this chapter with respect to the reinsurer:

- (i) an employee of the reinsurer;
- (ii) a United States manager of the United States branch of an alien reinsurer;
- (iii) an underwriting manager that, pursuant to contract:
  - (A) manages all the reinsurance operations of the reinsurer;
  - (B) is under common control with the reinsurer;
  - (C) is subject to Chapter 16, Insurance Holding Companies; and
  - (D) is not compensated based on the volume of premiums written; and

(iv) the manager of a group, association, pool, or organization of insurers that:  
(A) engage in joint underwriting or joint reinsurance; and  
(B) are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

(10) "Resident" is as defined by rule made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(11) "Search" means a license subline of authority in conjunction with the title insurance line of authority that allows a person to issue title insurance commitments or policies on behalf of a title insurer.

(12) "Sell" means to exchange a contract of insurance:

- (a) by any means;
- (b) for money or its equivalent; and
- (c) on behalf of an insurance company.

(13) "Solicit" means:

- (a) attempting to sell insurance;
- (b) asking or urging a person to apply for:
  - (i) a particular kind of insurance; and
  - (ii) insurance from a particular insurance company;
- (c) advertising insurance, including advertising for the purpose of obtaining leads for the sale of insurance; or
- (d) holding oneself out as being in the insurance business.

(14) "Terminate" means:

- (a) the cancellation of the relationship between:
  - (i) an individual licensee or agency licensee and a particular insurer; or
  - (ii) an individual licensee and a particular agency licensee; or
- (b) the termination of:
  - (i) an individual licensee's or agency licensee's authority to transact insurance on behalf of a particular insurance company; or
  - (ii) an individual licensee's authority to transact insurance on behalf of a particular agency licensee.

(15) "Title marketing representative" means a person who:

- (a) represents a title insurer in soliciting, requesting, or negotiating the placing of:
  - (i) title insurance; or
  - (ii) escrow services; and
- (b) does not have a search or escrow license as provided in Section 31A-23a-106.

(16) "Uniform application" means the version of the National Association of Insurance Commissioners' uniform application for resident and nonresident producer licensing at the time the application is filed.

(17) "Uniform business entity application" means the version of the National Association of Insurance Commissioners' uniform business entity application for resident and nonresident business entities at the time the application is filed.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

**31A-23a-103. Requirement of license.**

(1) (a) Unless exempted from the licensing requirement under Section 31A-23a-201 or 31A-23a-207, a person may not perform, offer to perform, or advertise any service as a producer, surplus lines producer, limited line producer, consultant, managing general agent, or reinsurance intermediary in Utah, without a valid individual or agency license issued under this chapter.

(b) A valid license includes at least one license type and one line of authority pertaining to that license type.

(c) A person may not utilize the services of another as a producer, surplus lines producer, limited line producer, consultant, managing general agent, or reinsurance intermediary if that person knows or should know that the other does not have a license as required by law.

(2) This part may not be construed to require an insurer to obtain an insurance producer license.

(3) An insurance contract is not invalid as a result of a violation of this section.

Amended by Chapter 253, 2012 General Session

**31A-23a-104. Application for individual license -- Application for agency license.**

(1) This section applies to an initial or renewal license as a:

- (a) producer;
- (b) surplus lines producer;
- (c) limited line producer;
- (d) consultant;
- (e) managing general agent; or
- (f) reinsurance intermediary.

(2) (a) Subject to Subsection (2)(b), to obtain or renew an individual license, an individual shall:

(i) file an application for an initial or renewal individual license with the commissioner on forms and in a manner the commissioner prescribes; and

(ii) pay a license fee that is not refunded if the application:

- (A) is denied; or
- (B) is incomplete when filed and is never completed by the applicant.

(b) An application described in this Subsection (2) shall provide:

- (i) information about the applicant's identity;
- (ii) the applicant's Social Security number;
- (iii) the applicant's personal history, experience, education, and business record;
- (iv) whether the applicant is 18 years of age or older;
- (v) whether the applicant has committed an act that is a ground for denial, suspension, or revocation as set forth in Section 31A-23a-105 or 31A-23a-111;
- (vi) if the application is for a resident individual producer license, certification that the applicant complies with Section 31A-23a-203.5; and
- (vii) any other information the commissioner reasonably requires.

(3) The commissioner may require a document reasonably necessary to verify the information contained in an application filed under this section.

(4) An applicant's Social Security number contained in an application filed under this section is a private record under Section 63G-2-302.

(5) (a) Subject to Subsection (5)(b), to obtain or renew an agency license, a person shall:

(i) file an application for an initial or renewal agency license with the commissioner on forms and in a manner the commissioner prescribes; and  
(ii) pay a license fee that is not refunded if the application:

(A) is denied; or

(B) is incomplete when filed and is never completed by the applicant.

(b) An application described in Subsection (5)(a) shall provide:

(i) information about the applicant's identity;

(ii) the applicant's federal employer identification number;

(iii) the designated responsible licensed individual;

(iv) the identity of the owners, partners, officers, and directors;

(v) whether the applicant has committed an act that is a ground for denial, suspension, or revocation as set forth in Section 31A-23a-105 or 31A-23a-111; and

(vi) any other information the commissioner reasonably requires.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

**31A-23a-105. General requirements for individual and agency license issuance and renewal.**

(1) (a) The commissioner shall issue or renew a license to a person described in Subsection (1)(b) to act as:

(i) a producer;

(ii) a surplus lines producer;

(iii) a limited line producer;

(iv) a consultant;

(v) a managing general agent; or

(vi) a reinsurance intermediary.

(b) The commissioner shall issue or renew a license under Subsection (1)(a) to a person who, as to the license type and line of authority classification applied for under Section 31A-23a-106:

(i) satisfies the application requirements under Section 31A-23a-104;

(ii) satisfies the character requirements under Section 31A-23a-107;

(iii) satisfies applicable continuing education requirements under Section 31A-23a-202;

(iv) satisfies applicable examination requirements under Section 31A-23a-108;

(v) satisfies applicable training period requirements under Section 31A-23a-203;

(vi) if an applicant for a resident individual producer license, certifies that, to the extent applicable, the applicant:

(A) is in compliance with Section 31A-23a-203.5; and

(B) will maintain compliance with Section 31A-23a-203.5 during the period for which the license is issued or renewed;

(vii) has not committed an act that is a ground for denial, suspension, or

revocation as provided in Section 31A-23a-111;

(viii) if a nonresident:

(A) complies with Section 31A-23a-109; and

(B) holds an active similar license in that person's home state;

(ix) if an applicant for an individual title insurance producer or agency title insurance producer license, satisfies the requirements of Section 31A-23a-204;

(x) if an applicant for a license to act as a life settlement provider or life settlement producer, satisfies the requirements of Section 31A-23a-117; and

(xi) pays the applicable fees under Section 31A-3-103.

(2) (a) This Subsection (2) applies to the following persons:

(i) an applicant for a pending:

(A) individual or agency producer license;

(B) surplus lines producer license;

(C) limited line producer license;

(D) consultant license;

(E) managing general agent license; or

(F) reinsurance intermediary license; or

(ii) a licensed:

(A) individual or agency producer;

(B) surplus lines producer;

(C) limited line producer;

(D) consultant;

(E) managing general agent; or

(F) reinsurance intermediary.

(b) A person described in Subsection (2)(a) shall report to the commissioner:

(i) an administrative action taken against the person, including a denial of a new or renewal license application:

(A) in another jurisdiction; or

(B) by another regulatory agency in this state; and

(ii) a criminal prosecution taken against the person in any jurisdiction.

(c) The report required by Subsection (2)(b) shall:

(i) be filed:

(A) at the time the person files the application for an individual or agency license; and

(B) for an action or prosecution that occurs on or after the day on which the person files the application:

(I) for an administrative action, within 30 days of the final disposition of the administrative action; or

(II) for a criminal prosecution, within 30 days of the initial appearance before a court; and

(ii) include a copy of the complaint or other relevant legal documents related to the action or prosecution described in Subsection (2)(b).

(3) (a) The department may require a person applying for a license or for consent to engage in the business of insurance to submit to a criminal background check as a condition of receiving a license or consent.

(b) A person, if required to submit to a criminal background check under

Subsection (3)(a), shall:

- (i) submit a fingerprint card in a form acceptable to the department; and
- (ii) consent to a fingerprint background check by:
  - (A) the Utah Bureau of Criminal Identification; and
  - (B) the Federal Bureau of Investigation.

(c) For a person who submits a fingerprint card and consents to a fingerprint background check under Subsection (3)(b), the department may request:

- (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and
- (ii) complete Federal Bureau of Investigation criminal background checks through the national criminal history system.

(d) Information obtained by the department from the review of criminal history records received under this Subsection (3) shall be used by the department for the purposes of:

- (i) determining if a person satisfies the character requirements under Section 31A-23a-107 for issuance or renewal of a license;
- (ii) determining if a person has failed to maintain the character requirements under Section 31A-23a-107; and
- (iii) preventing a person who violates the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033, from engaging in the business of insurance in the state.

(e) If the department requests the criminal background information, the department shall:

- (i) pay to the Department of Public Safety the costs incurred by the Department of Public Safety in providing the department criminal background information under Subsection (3)(c)(i);
- (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of Investigation in providing the department criminal background information under Subsection (3)(c)(ii); and
- (iii) charge the person applying for a license or for consent to engage in the business of insurance a fee equal to the aggregate of Subsections (3)(e)(i) and (ii).

(4) To become a resident licensee in accordance with Section 31A-23a-104 and this section, a person licensed as one of the following in another state who moves to this state shall apply within 90 days of establishing legal residence in this state:

- (a) insurance producer;
- (b) surplus lines producer;
- (c) limited line producer;
- (d) consultant;
- (e) managing general agent; or
- (f) reinsurance intermediary.

(5) (a) The commissioner may deny a license application for a license listed in Subsection (5)(b) if the person applying for the license, as to the license type and line of authority classification applied for under Section 31A-23a-106:

- (i) fails to satisfy the requirements as set forth in this section; or
- (ii) commits an act that is grounds for denial, suspension, or revocation as set forth in Section 31A-23a-111.

- (b) This Subsection (5) applies to the following licenses:
  - (i) producer;
  - (ii) surplus lines producer;
  - (iii) limited line producer;
  - (iv) consultant;
  - (v) managing general agent; or
  - (vi) reinsurance intermediary.
- (6) Notwithstanding the other provisions of this section, the commissioner may:
  - (a) issue a license to an applicant for a license for a title insurance line of authority only with the concurrence of the Title and Escrow Commission; and
  - (b) renew a license for a title insurance line of authority only with the concurrence of the Title and Escrow Commission.

Amended by Chapter 290, 2014 General Session  
Amended by Chapter 300, 2014 General Session

**31A-23a-106. License types.**

- (1) (a) A resident or nonresident license issued under this chapter shall be issued under the license types described under Subsection (2).
- (b) A license type and a line of authority pertaining to a license type describe the type of licensee and the lines of business that a licensee may sell, solicit, or negotiate. A license type is intended to describe the matters to be considered under any education, examination, and training required of a license applicant under Sections 31A-23a-108, 31A-23a-202, and 31A-23a-203.
- (2) (a) A producer license type includes the following lines of authority:
  - (i) life insurance, including a nonvariable contract;
  - (ii) variable contracts, including variable life and annuity, if the producer has the life insurance line of authority;
  - (iii) accident and health insurance, including a contract issued to a policyholder under Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance Organizations and Limited Health Plans;
  - (iv) property insurance;
  - (v) casualty insurance, including a surety or other bond;
  - (vi) title insurance under one or more of the following categories:
    - (A) search, including authority to act as a title marketing representative;
    - (B) escrow, including authority to act as a title marketing representative; and
    - (C) title marketing representative only; and
  - (vii) personal lines insurance.
- (b) A surplus lines producer license type includes the following lines of authority:
  - (i) property insurance, if the person holds an underlying producer license with the property line of insurance; and
  - (ii) casualty insurance, if the person holds an underlying producer license with the casualty line of authority.
- (c) A limited line producer license type includes the following limited lines of authority:
  - (i) limited line credit insurance;



- (ii) travel insurance, as set forth in Part 9, Travel Insurance Act;
  - (iii) motor club insurance;
  - (iv) car rental related insurance;
  - (v) legal expense insurance;
  - (vi) crop insurance;
  - (vii) self-service storage insurance;
  - (viii) bail bond producer;
  - (ix) guaranteed asset protection waiver; and
  - (x) portable electronics insurance.
- (d) A consultant license type includes the following lines of authority:
- (i) life insurance, including a nonvariable contract;
  - (ii) variable contracts, including variable life and annuity, if the consultant has the life insurance line of authority;
  - (iii) accident and health insurance, including a contract issued to a policyholder under Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance Organizations and Limited Health Plans;
  - (iv) property insurance;
  - (v) casualty insurance, including a surety or other bond; and
  - (vi) personal lines insurance.
- (e) A managing general agent license type includes the following lines of authority:
- (i) life insurance, including a nonvariable contract;
  - (ii) variable contracts, including variable life and annuity, if the managing general agent has the life insurance line of authority;
  - (iii) accident and health insurance, including a contract issued to a policyholder under Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance Organizations and Limited Health Plans;
  - (iv) property insurance;
  - (v) casualty insurance, including a surety or other bond; and
  - (vi) personal lines insurance.
- (f) A reinsurance intermediary license type includes the following lines of authority:
- (i) life insurance, including a nonvariable contract;
  - (ii) variable contracts, including variable life and annuity, if the reinsurance intermediary has the life insurance line of authority;
  - (iii) accident and health insurance, including a contract issued to a policyholder under Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance Organizations and Limited Health Plans;
  - (iv) property insurance;
  - (v) casualty insurance, including a surety or other bond; and
  - (vi) personal lines insurance.
- (g) A person who holds a license under Subsection (2)(a) has the qualifications necessary to act as a holder of a license under Subsection (2)(c), except that the person may not act under Subsection (2)(c)(viii) or (ix).
- (3) (a) The commissioner may by rule recognize other producer, surplus lines producer, limited line producer, consultant, managing general agent, or reinsurance

intermediary lines of authority as to kinds of insurance not listed under Subsections (2)(a) through (f).

(b) Notwithstanding Subsection (3)(a), for purposes of title insurance the Title and Escrow Commission may by rule, with the concurrence of the commissioner and subject to Section 31A-2-404, recognize other categories for an individual title insurance producer or agency title insurance producer line of authority not listed under Subsection (2)(a)(vi).

(4) The variable contracts line of authority requires:

(a) for a producer, licensure by the Financial Industry Regulatory Authority as a:

(i) registered broker-dealer; or

(ii) broker-dealer agent, with a current registration with a broker-dealer; and

(b) for a consultant, registration with the Securities and Exchange Commission or licensure by the Utah Division of Securities as an:

(i) investment adviser; or

(ii) investment adviser representative, with a current association with an investment adviser.

(5) A surplus lines producer is a producer who has a surplus lines license.

Amended by Chapter 277, 2014 General Session

### **31A-23a-107. Character requirements.**

An applicant for a license under this chapter shall show to the commissioner that:

(1) the applicant has the intent in good faith, to engage in the type of business that the license applied for would permit;

(2) (a) if a natural person, the applicant is competent and trustworthy; or

(b) if the applicant is an agency:

(i) the partners, directors, or principal officers or persons having comparable powers are trustworthy; and

(ii) that it will transact business in such a way that the acts that may only be performed by a licensed producer, surplus lines producer, limited line producer, consultant, managing general agent, or reinsurance intermediary are performed exclusively by natural persons who are licensed under this chapter to transact that type of business and designated on the agency's license;

(3) the applicant intends to comply with Section 31A-23a-502; and

(4) if a natural person, the applicant is at least 18 years of age.

Amended by Chapter 253, 2012 General Session

### **31A-23a-108. Examination requirements.**

(1) (a) The commissioner may require an applicant for a particular license type under Section 31A-23a-106 to pass a line of authority examination as a requirement for a license, except that an examination may not be required of an applicant for:

(i) a license under Subsection 31A-23a-106(2)(c); or

(ii) another limited line license line of authority recognized by the commissioner or the Title and Escrow Commission by rule as provided in Subsection 31A-23a-106(3).

- (b) The examination described in Subsection (1)(a):
  - (i) shall reasonably relate to the line of authority for which it is prescribed; and
  - (ii) may be administered by the commissioner or as otherwise specified by rule.
- (2) The commissioner shall waive the requirement of an examination for a nonresident applicant who:
  - (a) applies for an insurance producer license in this state within 90 days of establishing legal residence in this state;
  - (b) has been licensed for the same line of authority in another state; and
  - (c) (i) is licensed in the state described in Subsection (2)(b) at the time the applicant applies for an insurance producer license in this state; or
  - (ii) if the application is received within 90 days of the cancellation of the applicant's previous license:
    - (A) the prior state certifies that at the time of cancellation, the applicant was in good standing in that state; or
    - (B) the state's producer database records maintained by the National Association of Insurance Commissioners or the National Association of Insurance Commissioner's affiliates or subsidiaries, indicates that the producer is or was licensed in good standing for the line of authority requested.
- (3) This section's requirement may only be applied to an applicant who is a natural person.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

**31A-23a-109. Nonresident jurisdictional agreement.**

- (1) (a) If a nonresident license applicant has a valid producer, surplus lines producer, limited line producer, consultant, managing general agent, or reinsurance intermediary license from the nonresident license applicant's home state and the conditions of Subsection (1)(b) are met, the commissioner shall:
  - (i) waive the license requirements for a license under this chapter; and
  - (ii) issue the nonresident license applicant a nonresident license.
- (b) Subsection (1)(a) applies if:
  - (i) the nonresident license applicant:
    - (A) is licensed as a resident in the nonresident license applicant's home state at the time the nonresident license applicant applies for a nonresident producer, surplus lines producer, limited line producer, consultant, managing general agent, or reinsurance intermediary license;
    - (B) has submitted the proper request for licensure;
    - (C) has submitted to the commissioner:
      - (I) the application for licensure that the nonresident license applicant submitted to the applicant's home state; or
      - (II) a completed uniform application; and
    - (D) has paid the applicable fees under Section 31A-3-103; and
  - (ii) the nonresident license applicant's license in the applicant's home state is in good standing.
- (2) A nonresident applicant applying under Subsection (1) shall in addition to

complying with all license requirements for a license under this chapter execute, in a form acceptable to the commissioner, an agreement to be subject to the jurisdiction of the Utah commissioner and courts on any matter related to the applicant's insurance activities in this state, on the basis of:

- (a) service of process under Sections 31A-2-309 and 31A-2-310; or
- (b) service authorized:
  - (i) in the Utah Rules of Civil Procedure; or
  - (ii) under Section 78B-3-206.
- (3) The commissioner may verify a producer's licensing status through the producer database maintained by:
  - (a) the National Association of Insurance Commissioners; or
  - (b) an affiliate or subsidiary of the National Association of Insurance Commissioners.
- (4) The commissioner may not assess a greater fee for an insurance license or related service to a person not residing in this state solely on the fact that the person does not reside in this state.

Amended by Chapter 253, 2012 General Session

**31A-23a-110. Form and contents of license.**

- (1) A license issued under this chapter shall be in the form the commissioner prescribes and shall set forth:
  - (a) the name and address of the licensee;
  - (b) the license types and lines of authority under Section 31A-23a-106;
  - (c) the date of license issuance; and
  - (d) any other information the commissioner considers necessary.
- (2) A licensee under this chapter doing business under another name than the licensee's legal name shall notify the commissioner before using the assumed name in this state.

Amended by Chapter 345, 2008 General Session

**31A-23a-111. Revocation, suspension, surrender, lapsing, limiting, or otherwise terminating a license -- Rulemaking for renewal or reinstatement.**

- (1) A license type issued under this chapter remains in force until:
  - (a) revoked or suspended under Subsection (5);
  - (b) surrendered to the commissioner and accepted by the commissioner in lieu of administrative action;
  - (c) the licensee dies or is adjudicated incompetent as defined under:
    - (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
    - (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors;
  - (d) lapsed under Section 31A-23a-113; or
  - (e) voluntarily surrendered.
- (2) The following may be reinstated within one year after the day on which the license is no longer in force:

- (a) a lapsed license; or
- (b) a voluntarily surrendered license, except that a voluntarily surrendered license may not be reinstated after the license period in which the license is voluntarily surrendered.

(3) Unless otherwise stated in a written agreement for the voluntary surrender of a license, submission and acceptance of a voluntary surrender of a license does not prevent the department from pursuing additional disciplinary or other action authorized under:

- (a) this title; or
- (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) A line of authority issued under this chapter remains in force until:

- (a) the qualifications pertaining to a line of authority are no longer met by the licensee; or
- (b) the supporting license type:
  - (i) is revoked or suspended under Subsection (5);
  - (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of administrative action;
  - (iii) lapses under Section 31A-23a-113; or
  - (iv) is voluntarily surrendered; or
- (c) the licensee dies or is adjudicated incompetent as defined under:
  - (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
  - (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors.

(5) (a) If the commissioner makes a finding under Subsection (5)(b), as part of an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the commissioner may:

- (i) revoke:
  - (A) a license; or
  - (B) a line of authority;
- (ii) suspend for a specified period of 12 months or less:
  - (A) a license; or
  - (B) a line of authority;
- (iii) limit in whole or in part:
  - (A) a license; or
  - (B) a line of authority; or
- (iv) deny a license application.

(b) The commissioner may take an action described in Subsection (5)(a) if the commissioner finds that the licensee:

- (i) is unqualified for a license or line of authority under Section 31A-23a-104, 31A-23a-105, or 31A-23a-107;
- (ii) violates:
  - (A) an insurance statute;
  - (B) a rule that is valid under Subsection 31A-2-201(3); or
  - (C) an order that is valid under Subsection 31A-2-201(4);
- (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or

other delinquency proceedings in any state;

(iv) fails to pay a final judgment rendered against the person in this state within 60 days after the day on which the judgment became final;

(v) fails to meet the same good faith obligations in claims settlement that is required of admitted insurers;

(vi) is affiliated with and under the same general management or interlocking directorate or ownership as another insurance producer that transacts business in this state without a license;

(vii) refuses:

(A) to be examined; or

(B) to produce its accounts, records, and files for examination;

(viii) has an officer who refuses to:

(A) give information with respect to the insurance producer's affairs; or

(B) perform any other legal obligation as to an examination;

(ix) provides information in the license application that is:

(A) incorrect;

(B) misleading;

(C) incomplete; or

(D) materially untrue;

(x) violates an insurance law, valid rule, or valid order of another state's insurance department;

(xi) obtains or attempts to obtain a license through misrepresentation or fraud;

(xii) improperly withholds, misappropriates, or converts money or properties received in the course of doing insurance business;

(xiii) intentionally misrepresents the terms of an actual or proposed:

(A) insurance contract;

(B) application for insurance; or

(C) life settlement;

(xiv) is convicted of a felony;

(xv) admits or is found to have committed an insurance unfair trade practice or fraud;

(xvi) in the conduct of business in this state or elsewhere:

(A) uses fraudulent, coercive, or dishonest practices; or

(B) demonstrates incompetence, untrustworthiness, or financial irresponsibility;

(xvii) has an insurance license, or its equivalent, denied, suspended, or revoked in another state, province, district, or territory;

(xviii) forges another's name to:

(A) an application for insurance; or

(B) a document related to an insurance transaction;

(xix) improperly uses notes or another reference material to complete an examination for an insurance license;

(xx) knowingly accepts insurance business from an individual who is not licensed;

(xxi) fails to comply with an administrative or court order imposing a child support obligation;

(xxii) fails to:

(A) pay state income tax; or  
(B) comply with an administrative or court order directing payment of state income tax;

(xxiii) violates or permits others to violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is prohibited from engaging in the business of insurance; or  
(xxiv) engages in a method or practice in the conduct of business that endangers the legitimate interests of customers and the public.

(c) For purposes of this section, if a license is held by an agency, both the agency itself and any individual designated under the license are considered to be the holders of the license.

(d) If an individual designated under the agency license commits an act or fails to perform a duty that is a ground for suspending, revoking, or limiting the individual's license, the commissioner may suspend, revoke, or limit the license of:

(i) the individual;  
(ii) the agency, if the agency:  
(A) is reckless or negligent in its supervision of the individual; or  
(B) knowingly participates in the act or failure to act that is the ground for suspending, revoking, or limiting the license; or  
(iii) (A) the individual; and  
(B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).

(6) A licensee under this chapter is subject to the penalties for acting as a licensee without a license if:

(a) the licensee's license is:  
(i) revoked;  
(ii) suspended;  
(iii) limited;  
(iv) surrendered in lieu of administrative action;  
(v) lapsed; or  
(vi) voluntarily surrendered; and  
(b) the licensee:  
(i) continues to act as a licensee; or  
(ii) violates the terms of the license limitation.

(7) A licensee under this chapter shall immediately report to the commissioner:  
(a) a revocation, suspension, or limitation of the person's license in another state, the District of Columbia, or a territory of the United States;  
(b) the imposition of a disciplinary sanction imposed on that person by another state, the District of Columbia, or a territory of the United States; or  
(c) a judgment or injunction entered against that person on the basis of conduct involving:  
(i) fraud;  
(ii) deceit;  
(iii) misrepresentation; or  
(iv) a violation of an insurance law or rule.

(8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a license in lieu of administrative action may specify a time, not to exceed five

years, within which the former licensee may not apply for a new license.

(b) If no time is specified in an order or agreement described in Subsection (8)(a), the former licensee may not apply for a new license for five years from the day on which the order or agreement is made without the express approval by the commissioner.

(9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this part if so ordered by a court.

(10) The commissioner shall by rule prescribe the license renewal and reinstatement procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 253, 2012 General Session

**31A-23a-112. Probation -- Grounds for revocation.**

(1) The commissioner may place a licensee on probation for a period not to exceed 24 months as follows:

(a) after an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, for circumstances that would justify a suspension under Section 31A-23a-111; or

(b) at the issuance or renewal of a license:

(i) with an admitted violation under 18 U.S.C. Sec. 1033; or

(ii) with a response to background information questions on a new or renewal license application or information received from a background check conducted in connection with a new or renewal license application that indicates:

(A) the person has been convicted of a crime, that is listed by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as a crime that is grounds for probation;

(B) the person is currently charged with a crime, that is listed by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as a crime that is grounds for probation regardless of whether adjudication is withheld;

(C) the person has been involved in an administrative proceeding regarding a professional or occupational license; or

(D) a business in which the person is or was an owner, partner, officer, or director has been involved in an administrative proceeding regarding a professional or occupational license.

(2) The commissioner may place a licensee on probation for a specified period no longer than 24 months if the licensee has admitted to a violation under 18 U.S.C. Sec. 1033.

(3) The probation order shall state the conditions for retention of the license, which shall be reasonable.

(4) A violation of the probation is grounds for revocation pursuant to a proceeding authorized under Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session



**31A-23a-113. License lapse and voluntary surrender.**

- (1) (a) A license issued under this chapter shall lapse if the licensee fails to:
- (i) pay when due a fee under Section 31A-3-103;
  - (ii) complete continuing education requirements under Section 31A-23a-202 before submitting the license renewal application;
  - (iii) submit a completed renewal application as required by Section 31A-23a-104;
  - (iv) submit additional documentation required to complete the licensing process as related to a specific license type or line of authority; or
  - (v) maintain an active license in a licensee's home state if the licensee is a nonresident licensee.
- (b) (i) A licensee whose license lapses due to the following may request an action described in Subsection (1)(b)(ii):
- (A) military service;
  - (B) voluntary service for a period of time designated by the person for whom the licensee provides voluntary service; or
  - (C) some other extenuating circumstances, such as long-term medical disability.
- (ii) A licensee described in Subsection (1)(b)(i) may request:
- (A) reinstatement of the license no later than one year after the day on which the license lapses; and
  - (B) waiver of any of the following imposed for failure to comply with renewal procedures:
    - (I) an examination requirement;
    - (II) reinstatement fees set under Section 31A-3-103;
    - (III) continuing education requirements; or
    - (IV) other sanction imposed for failure to comply with renewal procedures.
- (2) If a license issued under this chapter is voluntarily surrendered, the license or line of authority may be reinstated:
- (a) during the license period in which the license is voluntarily surrendered; and
  - (b) no later than one year after the day on which the license is voluntarily surrendered.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

**31A-23a-114. Temporary individual or agency license -- Trustee for terminated licensee's business.**

- (1) (a) The commissioner may issue a temporary individual or agency license:
- (i) to a person listed in Subsection (1)(b):
    - (A) if the commissioner considers that the temporary license is necessary:
      - (I) for the servicing of an insurance business in the public interest; and
      - (II) to provide continued service to the insureds who procured insurance in a circumstance described in Subsection (1)(b);
    - (B) for a period not to exceed 180 days; and
    - (C) without requiring an examination; or
  - (ii) in any other circumstance:

(A) if the commissioner considers the public interest will best be served by issuing the temporary license;

(B) for a period not to exceed 180 days; and

(C) without requiring an examination.

(b) The commissioner may issue a temporary individual or agency license in accordance with Subsection (1)(a) to:

(i) the surviving spouse or court-appointed personal representative of a licensee who dies or acquires a mental or physical disability to allow adequate time for:

(A) the sale of the insurance business owned by the licensee;

(B) recovery or return of the licensee to the business; or

(C) the training and licensing of new personnel to operate the licensee's business;

(ii) to a member or employee of a business entity licensed as an agency upon the death or disability of an individual designated in:

(A) the business entity application; or

(B) the license; or

(iii) the designee of a licensed agency entering active service in the armed forces of the United States of America.

(2) If a person's license is terminated under Section 31A-23a-111 or 31A-23a-113, the commissioner may appoint a trustee to provide in the public interest continuing service to the insureds who procured insurance through the person whose license is terminated:

(a) at the request of the person whose license is terminated; or

(b) upon the commissioner's own initiative.

(3) This section does not apply if the deceased licensee or licensee with a disability does not or did not own any ownership interest in the accounts and associated expiration lists that were previously serviced by the licensee.

(4) (a) A person issued a temporary license under Subsection (1) receives the license and shall perform the duties under the license subject to the commissioner's authority to:

(i) require a temporary licensee to have a suitable sponsor who:

(A) is a licensee; and

(B) assumes responsibility for all acts of the temporary licensee; or

(ii) impose other requirements that are:

(A) designed to protect the insureds and the public; and

(B) similar to the condition described in Subsection (4)(a)(i).

(b) A trustee appointed under Subsection (2) shall be appointed and perform the trustee's duties subject to the terms and conditions described in Subsections (4)(b)(i) through (vi).

(i) (A) A trustee appointed under Subsection (2) shall be licensed under this chapter to perform the services required by the trustor's clients.

(B) When possible, the commissioner shall appoint a trustee who is no longer actively engaged on the trustee's own behalf in business as a licensee.

(C) The commissioner shall only select a person to act as trustee who is trustworthy and competent to perform the necessary services.

(ii) (A) If the deceased person, person with a disability, or unlicensed person for

whom the trustee is acting was a producer, the insurers through which the former producer's business was written shall cooperate with the trustee in allowing the trustee to service the policies written through the insurer.

(B) The trustee shall abide by the terms of the agency agreement between the former producer and the issuing insurer, except that terms in those agreements terminating the agreement upon the death, disability, or license termination of the former producer do not bar the trustee from continuing to act under the agreement.

(iii) (A) The commissioner shall set the trustee's compensation, which:

(I) may be stated in terms of a percentage of commissions; and

(II) shall be equitable.

(B) The compensation shall be paid exclusively from:

(I) the commissions generated by the former licensee's insurance accounts serviced by the trustee; and

(II) other funds the former licensee or the licensee's successor in interest agree to pay.

(C) The trustee has no special priority to commissions over the former licensee's creditors.

(iv) (A) The commissioner or the state may not be held liable for errors or omissions of:

(I) the former licensee; or

(II) the trustee.

(B) The trustee may not be held liable for errors and omissions that were caused in any material way by the negligence of the former licensee.

(C) The trustee may be held liable for errors and omissions which arise solely from the trustee's negligence.

(D) The trustee's compensation level shall be sufficient to allow the trustee to purchase errors and omissions coverage, if that coverage is not provided the trustee by:

(I) the former licensee; or

(II) the licensee's successor in interest.

(v) (A) It is a breach of the trustee's fiduciary duty to capture the accounts of trustor's clients, either directly or indirectly.

(B) The trustee may not purchase the accounts or expiration lists of the former licensee, unless the commissioner expressly ratifies the terms of the sale.

(C) The commissioner may adopt rules that:

(I) further define the trustee's fiduciary duties; and

(II) explain how the trustee is to carry out the trustee's responsibilities.

(vi) (A) The trust may be terminated by:

(I) the commissioner; or

(II) the person that requested the trust be established.

(B) The trust is terminated by written notice being delivered to:

(I) the trustee; and

(II) the commissioner.

(5) (a) The commissioner may by order:

(i) limit the authority of any temporary licensee or trustee in any way the commissioner considers necessary to protect insureds and the public; and

(ii) revoke a temporary license or trustee's appointment if the commissioner

finds that the insureds or the public are endangered.

(b) A temporary license or trustee's appointment may not continue after the owner or personal representative disposes of the business.

Amended by Chapter 366, 2011 General Session

**31A-23a-115. Appointment of individual and agency insurance producer, limited line producer, or managing general agent -- Reports and lists.**

(1) (a) An insurer shall appoint an individual or agency with whom it has a contract as an insurance producer, limited line producer, or managing general agent to act on the insurer's behalf in order for the licensee to do business for the insurer in this state.

(b) An insurer shall report to the commissioner, at intervals and in the form the commissioner establishes by rule:

- (i) a new appointment; and
- (ii) a termination of appointment.

(2) (a) (i) An insurer shall report to the commissioner the cause of termination of an appointment if:

(A) the reason for termination is a reason described in Subsection 31A-23a-111(5)(b); or

(B) the insurer has knowledge that the individual or agency licensee is found to have engaged in an activity described in Subsection 31A-23a-111(5)(b) by:

- (I) a court;
- (II) a government body; or
- (III) a self-regulatory organization, which the commissioner may define by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(ii) The information provided to the commissioner under this Subsection (2) is a private record under Title 63G, Chapter 2, Government Records Access and Management Act.

(b) An insurer is immune from civil action, civil penalty, or damages if the insurer complies in good faith with this Subsection (2) in reporting to the commissioner the cause of termination of an appointment.

(c) Notwithstanding any other provision in this section, an insurer is not immune from any action or resulting penalty imposed on the reporting insurer as a result of proceedings brought by or on behalf of the department if the action is based on evidence other than the report submitted in compliance with this Subsection (2).

(3) If an insurer appoints an agency, the insurer need not appoint, report, or pay appointment reporting fees for an individual designated on the agency's license under Section 31A-23a-302.

(4) If an insurer lists a licensee in a report submitted under Subsection (2), there is a rebuttable presumption that in placing a risk with the insurer the appointed licensee or any of the licensee's licensed employees act on behalf of the insurer.

Amended by Chapter 349, 2009 General Session

**31A-23a-115.5. Use of customer service representative.**

A producer, surplus lines producer, or consultant who employs a customer service representative is responsible for the duties performed by the customer service representative. A customer service representative:

(1) may not maintain an office independent of the customer service representative's licensed producer, surplus lines producer, or consultant employer for the purpose of conducting insurance activities;

(2) except as provided in Subsection (3), may not sell, solicit, negotiate, or bind coverage; and

(3) may provide a customer a quote on behalf of the customer service representative's licensed producer, surplus lines producer, or consultant employer.

Amended by Chapter 253, 2012 General Session

**31A-23a-116. Services performed for unauthorized insurers.**

(1) A person licensed under Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries, may not perform an act that assists a person not authorized as an insurer to act as an insurer.

(2) It is a violation of this section to assist a person purporting to be exempt from state insurance regulation under Section 514 of the Employee Retirement Income Security Act of 1974, unless that person submits to the commissioner a certificate from the United States Department of Labor, or other evidence satisfactory to the commissioner, showing that the laws of Utah are preempted under Section 514 of the Employee Retirement Income Security Act of 1974 or other federal law.

(3) It is not a violation of this section:

(a) to assist a person engaged in self insurance as defined under Section 31A-1-301; or

(b) for a surplus lines producer to engage in the placement of insurance under Section 31A-15-103.

Amended by Chapter 345, 2008 General Session

**31A-23a-117. Special requirements for life settlement providers and producers.**

(1) A life settlement provider or life settlement producer shall be licensed in accordance with this title, with the additional requirements listed in this section.

(2) A life settlement provider shall provide to the commissioner:

(a) a detailed plan of operation with the life settlement provider's:

(i) initial license application; and

(ii) renewal application;

(b) a copy of the life settlement provider's most current audited financial statement;

(c) an antifraud plan that meets the requirements of Section 31A-36-117; and

(d) a bond or other form of assurance of financial responsibility as provided under rules made in accordance with Section 31A-36-119.

(3) A life settlement provider shall provide with the life settlement provider's initial license application information describing the life settlement provider's life

settlement experience, training, and education.

(4) A life settlement provider shall provide to the commissioner, within 30 days after a change occurs, new or revised information concerning any of the following:

- (a) officers;
- (b) holders of more than 10% of its stock;
- (c) partners;
- (d) directors;
- (e) members; and
- (f) designated employees.

Amended by Chapter 355, 2009 General Session

**31A-23a-118. Car rental related licensing requirements.**

(1) Subject to Section 31A-23a-103, a person is required to hold a limited line producer license with a car rental related insurance limited line of authority to sell or offer car rental related insurance coverage under a car rental related insurance policy.

(2) A car rental related insurance limited line license issued pursuant to Sections 31A-23a-103 and 31A-23a-106 authorizes an employee or authorized representative of the licensee to sell or offer coverage under a car rental related insurance policy to a customer at each location at which the licensee engages in car rental related insurance transactions.

(3) An agency holding a car rental related insurance limited line license shall:

(a) be appointed by an insurer underwriting a car rental related insurance policy that the agency sells or offers; and

(b) have a designated responsible licensed individual at each location at which the agency is soliciting, selling, or offering car rental related insurance.

(4) An agency holding a car rental related insurance limited line license may employ a nonlicensed individual employed as a counter sales representative in soliciting, selling, or offering car rental related insurance. The nonlicensed individual shall be:

(a) trained and supervised in the sale of car rental related insurance products; and

(b) responsible to a licensed individual designated by the agency at each location where a car rental related insurance product is sold.

Enacted by Chapter 319, 2013 General Session

**31A-23a-201. Exceptions to producer licensing.**

(1) The commissioner may not require a license as an insurance producer of:

(a) an officer, director, or employee of an insurer or of an insurance producer if:

(i) the officer, director, or employee does not receive any commission on a policy written or sold to insure risks residing, located, or to be performed in this state; and

(ii) (A) the officer's, director's, or employee's activities are:

(I) executive, administrative, managerial, clerical, or a combination of these activities; and

- (II) only indirectly related to the sale, solicitation, or negotiation of insurance;
- (B) the officer's, director's, or employee's function relates to:
  - (I) underwriting;
  - (II) loss control;
  - (III) inspection; or
  - (IV) the processing, adjusting, investigating or settling of a claim on a contract of insurance; or
- (C) (I) the officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting an insurance producer;
- (II) the officer's, director's, or employee's activities are limited to providing technical advice and assistance to a licensed insurance producer; and
- (III) the officer's, director's, or employee's activities do not include the sale, solicitation, or negotiation of insurance;
- (b) a person who:
  - (i) is paid no commission for the services described in Subsection (1)(b)(ii); and
  - (ii) secures and furnishes information for the purpose of:
    - (A) group life insurance;
    - (B) group property and casualty insurance;
    - (C) group annuities;
    - (D) group or blanket accident and health insurance;
    - (E) enrolling individuals under plans;
    - (F) issuing certificates under plans; or
    - (G) otherwise assisting in administering plans;
- (c) a person who:
  - (i) is paid no commission for the services described in Subsection (1)(c)(ii); and
  - (ii) performs administrative services related to mass marketed property and casualty insurance;
- (d) (i) any of the following if the conditions of Subsection (1)(d)(ii) are met:
  - (A) an employer or association; or
  - (B) an officer, director, employee, or trustee of an employee trust plan;
- (ii) a person listed in Subsection (1)(d)(i):
  - (A) to the extent that the employer, officer, employee, director, or trustee is engaged in the administration or operation of a program of employee benefits for:
    - (I) the employer's or association's own employees; or
    - (II) the employees of a subsidiary or affiliate of an employer or association;
  - (B) the program involves the use of insurance issued by an insurer; and
  - (C) the employer, association, officer, director, employee, or trustee is not in any manner compensated, directly or indirectly, by the company issuing the contract;
- (e) an employee of an insurer or organization employed by an insurer who:
  - (i) is engaging in:
    - (A) the inspection, rating, or classification of risks; or
    - (B) the supervision of the training of insurance producers; and
  - (ii) is not individually engaged in the sale, solicitation, or negotiation of insurance;
- (f) a person whose activities in this state are limited to advertising:
  - (i) without the intent to solicit insurance in this state;

- (ii) through communications in mass media including:
  - (A) a printed publication; or
  - (B) a form of electronic mass media;
- (iii) that is distributed to residents outside of the state; and
- (iv) if the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this state;
  - (g) a person who:
    - (i) is not a resident of this state;
    - (ii) sells, solicits, or negotiates a contract of insurance:
      - (A) for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract; and
      - (B) insures risks located in a state in which the person is licensed as provided in Subsection (1)(g)(iii); and
    - (iii) is licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business; or
  - (h) if the employee does not sell, solicit, or receive a commission for a contract of insurance, a salaried full-time employee who counsels or advises the employee's employer relating to the insurance interests of:
    - (i) the employer; or
    - (ii) a subsidiary or business affiliate of the employer.
- (2) The commissioner may by rule exempt a class of persons from the license requirement of Subsection 31A-23a-103(1) if:
  - (a) the functions performed by the class of persons does not require:
    - (i) special competence;
    - (ii) special trustworthiness; or
    - (iii) regulatory surveillance made possible by licensing; or
  - (b) other existing safeguards make regulation unnecessary.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-202. Continuing education requirements.**

- (1) Pursuant to this section, the commissioner shall by rule prescribe the continuing education requirements for a producer and a consultant.
- (2) (a) The commissioner may not state a continuing education requirement in terms of formal education.
- (b) The commissioner may state a continuing education requirement in terms of hours of insurance-related instruction received.
- (c) Insurance-related formal education may be a substitute, in whole or in part, for the hours required under Subsection (2)(b).
- (3) (a) The commissioner shall impose continuing education requirements in accordance with a two-year licensing period in which the licensee meets the requirements of this Subsection (3).
- (b) (i) Except as provided in this section, the continuing education requirements shall require:
  - (A) that a licensee complete 24 credit hours of continuing education for every two-year licensing period;



(B) that 3 of the 24 credit hours described in Subsection (3)(b)(i)(A) be ethics courses; and

(C) that the licensee complete at least half of the required hours through classroom hours of insurance-related instruction.

(ii) An hour of continuing education in accordance with Subsection (3)(b)(i) may be obtained through:

(A) classroom attendance;

(B) home study;

(C) watching a video recording;

(D) experience credit; or

(E) another method provided by rule.

(iii) (A) Notwithstanding Subsections (3)(b)(i)(A) and (B), an individual title insurance producer is required to complete 12 credit hours of continuing education for every two-year licensing period, with 3 of the credit hours being ethics courses unless the individual title insurance producer is licensed in this state as an individual title insurance producer for 20 or more consecutive years.

(B) If an individual title insurance producer is licensed in this state as an individual title insurance producer for 20 or more consecutive years, the individual title insurance producer is required to complete 6 credit hours of continuing education for every two-year licensing period, with 3 of the credit hours being ethics courses.

(C) Notwithstanding Subsection (3)(b)(iii)(A) or (B), an individual title insurance producer is considered to have met the continuing education requirements imposed under Subsection (3)(b)(iii)(A) or (B) if the individual title insurance producer:

(I) is an active member in good standing with the Utah State Bar;

(II) is in compliance with the continuing education requirements of the Utah State Bar; and

(III) if requested by the department, provides the department evidence that the individual title insurance producer complied with the continuing education requirements of the Utah State Bar.

(c) A licensee may obtain continuing education hours at any time during the two-year licensing period.

(d) (i) A licensee is exempt from continuing education requirements under this section if:

(A) the licensee was first licensed before December 31, 1982;

(B) the license does not have a continuous lapse for a period of more than one year, except for a license for which the licensee has had an exemption approved before May 11, 2011;

(C) the licensee requests an exemption from the department; and

(D) the department approves the exemption.

(ii) If the department approves the exemption under Subsection (3)(d)(i), the licensee is not required to apply again for the exemption.

(e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner shall, by rule:

(i) publish a list of insurance professional designations whose continuing education requirements can be used to meet the requirements for continuing education under Subsection (3)(b);

(ii) authorize a continuing education provider or a state or national professional producer or consultant association to:

(A) offer a qualified program for a license type or line of authority on a geographically accessible basis; and

(B) collect a reasonable fee for funding and administration of a continuing education program, subject to the review and approval of the commissioner; and

(iii) provide that membership by a producer or consultant in a state or national professional producer or consultant association is considered a substitute for the equivalent of two hours for each year during which the producer or consultant is a member of the professional association, except that the commissioner may not give more than two hours of continuing education credit in a year regardless of the number of professional associations of which the producer or consultant is a member.

(f) A fee permitted under Subsection (3)(e)(ii)(B) that is charged for attendance at a professional producer or consultant association program may be less for an association member, on the basis of the member's affiliation expense, but shall preserve the right of a nonmember to attend without affiliation.

(4) The commissioner shall approve a continuing education provider or continuing education course that satisfies the requirements of this section.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner shall by rule set the processes and procedures for continuing education provider registration and course approval.

(6) The requirements of this section apply only to a producer or consultant who is an individual.

(7) A nonresident producer or consultant is considered to have satisfied this state's continuing education requirements if the nonresident producer or consultant satisfies the nonresident producer's or consultant's home state's continuing education requirements for a licensed insurance producer or consultant.

(8) A producer or consultant subject to this section shall keep documentation of completing the continuing education requirements of this section for two years after the end of the two-year licensing period to which the continuing education applies.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

### **31A-23a-203. Training period requirements.**

(1) A producer is eligible to become a surplus lines producer only if the producer:

(a) has passed the applicable surplus lines producer examination;

(b) has been a producer with property or casualty or both lines of authority for at least three years during the four years immediately preceding the date of application; and

(c) has paid the applicable fee under Section 31A-3-103.

(2) A person is eligible to become a consultant only if the person has acted in a capacity that would provide the person with preparation to act as an insurance consultant for a period aggregating not less than three years during the four years immediately preceding the date of application.

(3) (a) A resident producer with an accident and health line of authority may only sell long-term care insurance if the producer:

(i) initially completes a minimum of three hours of long-term care training before selling long-term care coverage; and

(ii) after completing the training required by Subsection (3)(a)(i), completes a minimum of three hours of long-term care training during each subsequent two-year licensing period.

(b) A course taken to satisfy a long-term care training requirement may be used toward satisfying a producer continuing education requirement.

(c) Long-term care training is not a continuing education requirement to renew a producer license.

(d) An insurer that issues long-term care insurance shall demonstrate to the commissioner, upon request, that a producer who is appointed by the insurer and who sells long-term care insurance coverage is in compliance with this Subsection (3).

(4) The training periods required under this section apply only to an individual applying for a license under this chapter.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

### **31A-23a-203.5. Errors and omissions coverage requirements.**

(1) In accordance with this section, a resident individual producer shall ensure that the resident individual producer is covered:

(a) for the legal liability of the resident individual producer as the result of an erroneous act or failure to act in the resident individual producer's capacity as a producer; and

(b) at all times during the term of the resident individual producer's license.

(2) The coverage required by Subsection (1) shall consist of:

(a) a policy naming the resident individual producer;

(b) a policy naming the agency that designates the resident individual producer in accordance with this chapter; or

(c) a written agreement by an insurer or group of affiliated insurers, on behalf of a resident individual producer who is or will become an exclusive agent of the insurer or group of affiliated insurers, under which the insurer or group of affiliated insurers agrees to assume responsibility, to the benefit of an aggrieved person, for legal liability of the resident individual producer as the result of an erroneous act or failure to act in the resident individual producer's capacity as a producer for the insurer or group of affiliated insurers.

(3) The commissioner may, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for:

(a) the terms and conditions of the coverage required under Subsection (1); and

(b) if the coverage required by Subsection (1) is terminated during a resident individual producer's license term, requirements to:

(i) provide notice; and

(ii) replace the coverage.

(4) An individual title insurance producer is considered to be in compliance with

this section when:

(a) the individual title insurance producer is not designated by an agency title producer and maintains the individual title insurance producer's own bond, policy, or other financial protection in accordance with Subsection 31A-23a-204(2); or

(b) the individual title insurance producer is designated by an agency title insurance producer that maintains a bond, policy, or other financial protection in accordance with Subsection 31A-23a-204(2).

(5) Notwithstanding the other provisions of this section, a resident individual producer is exempt from the requirement to maintain coverage as provided in this section during a period in which the resident individual producer is not either:

(a) appointed by an insurer under this title; or

(b) designated by an agency under this title.

(6) A limited lines producer is exempt from this section.

Amended by Chapter 319, 2013 General Session

**31A-23a-204. Special requirements for title insurance producers and agencies.**

An individual title insurance producer or agency title insurance producer shall be licensed in accordance with this chapter, with the additional requirements listed in this section.

(1) (a) A person that receives a new license under this title as an agency title insurance producer shall at the time of licensure be owned or managed by at least one individual who is licensed for at least three of the five years immediately preceding the date on which the agency title insurance producer applies for a license with both:

(i) a search line of authority; and

(ii) an escrow line of authority.

(b) An agency title insurance producer subject to Subsection (1)(a) may comply with Subsection (1)(a) by having the agency title insurance producer owned or managed by:

(i) one or more individuals who are licensed with the search line of authority for the time period provided in Subsection (1)(a); and

(ii) one or more individuals who are licensed with the escrow line of authority for the time period provided in Subsection (1)(a).

(c) A person licensed as an agency title insurance producer shall at all times during the term of licensure be owned or managed by at least one individual who is licensed for at least three years within the preceding five-year period with both:

(i) a search line of authority; and

(ii) an escrow line of authority.

(d) The Title and Escrow Commission may by rule, subject to Section 31A-2-404, exempt an attorney with real estate experience from the experience requirements in Subsection (1)(a).

(e) An individual who satisfies the requirements of this Subsection (1) is known as a "qualifying licensee." At any given time, an individual may be a qualifying licensee for not more than two agency title insurance producers.

(2) (a) An individual title insurance producer or agency title insurance producer

appointed by an insurer shall maintain:

- (i) a fidelity bond;
- (ii) a professional liability insurance policy; or
- (iii) a financial protection:
  - (A) equivalent to that described in Subsection (2)(a)(i) or (ii); and
  - (B) that the commissioner considers adequate.

(b) The bond, insurance, or financial protection required by this Subsection (2):

- (i) shall be supplied under a contract approved by the commissioner to provide protection against the improper performance of any service in conjunction with the issuance of a contract or policy of title insurance; and

- (ii) be in a face amount no less than \$50,000.

(c) The Title and Escrow Commission may by rule, subject to Section 31A-2-404, exempt individual title insurance producer or agency title insurance producers from the requirements of this Subsection (2) upon a finding that, and only so long as, the required policy or bond is generally unavailable at reasonable rates.

(3) An individual title insurance producer or agency title insurance producer appointed by an insurer may maintain a reserve fund to the extent money was deposited before July 1, 2008, and not withdrawn to the income of the individual title insurance producer or agency title insurance producer.

(4) An examination for licensure shall include questions regarding the search and examination of title to real property.

(5) An individual title insurance producer may not perform the functions of escrow unless the individual title insurance producer has been examined on the fiduciary duties and procedures involved in those functions.

(6) The Title and Escrow Commission may adopt rules, subject to Section 31A-2-404, after consulting with the commissioner and the commissioner's test administrator, establishing an examination for a license that will satisfy this section.

(7) A license may be issued to an individual title insurance producer or agency title insurance producer who has qualified:

- (a) to perform only searches and examinations of title as specified in Subsection (4);
- (b) to handle only escrow arrangements as specified in Subsection (5); or
- (c) to act as a title marketing representative.

(8) (a) A person licensed to practice law in Utah is exempt from the requirements of Subsections (2) and (3) if that person issues 12 or less policies in any 12-month period.

(b) In determining the number of policies issued by a person licensed to practice law in Utah for purposes of Subsection (8)(a), if the person licensed to practice law in Utah issues a policy to more than one party to the same closing, the person is considered to have issued only one policy.

(9) A person licensed to practice law in Utah, whether exempt under Subsection (8) or not, shall maintain a trust account separate from a law firm trust account for all title and real estate escrow transactions.

Amended by Chapter 319, 2013 General Session

**31A-23a-205. Special requirements for bail bond producers and bail bond enforcement agents.**

(1) As used in this section, "bail bond producer" and "bail enforcement agent" have the same definitions as in Section 31A-35-102.

(2) A bail bond producer may not operate in this state without an appointment from one or more authorized bail bond surety insurers or licensed bail bond surety companies.

(3) A bail bond enforcement agent may not operate in this state without an appointment from one or more licensed bail bond producers.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-206. Special requirements for variable contracts line of authority.**

(1) Before applying for a variable contracts line of authority:

(a) a producer shall be licensed under Section 61-1-3 as a:

(i) broker-dealer; or

(ii) broker-dealer agent; and

(b) a consultant shall be licensed under Section 61-1-3 as an:

(i) investment adviser; or

(ii) investment adviser representative.

(2) A producer's or consultant's variable contracts line of authority is revoked on the day the producer's or consultant's securities related license under Section 61-1-3 is no longer valid.

Amended by Chapter 253, 2012 General Session

**31A-23a-207. Registration of motor club agents.**

(1) Subsection 31A-23a-103(1) does not apply to persons who sell no insurance products other than motor club service contracts, if those contracts provide only for those services described in Subsections 31A-11-102(1)(b) through (1)(f), and personal accident insurance provided automatically with the purchase of the motor club contract.

(2) Section 31A-11-110 applies to those persons in Subsection (1).

(3) Subsection 31A-23a-103(1) applies to persons selling motor club contracts providing services in addition to those described under Subsections 31A-11-102(1)(b) through (1)(f).

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-208. Producer and agency authority in health insurance exchange.**

A producer or agency licensed under this chapter, with a line of authority that permits the producer or agency to sell, negotiate, or solicit accident and health insurance, is authorized to sell, negotiate, or solicit qualified health plans offered on an exchange that is:

(1) operated in the state; or

(2) operated in the state and certified by the United States Department of Health

and Human Services as a:

- (a) state-based exchange under PPACA;
- (b) a federally facilitated exchange under PPACA; or
- (c) a partnership exchange under PPACA.

Enacted by Chapter 341, 2013 General Session

**31A-23a-301. Agency license.**

An insurance organization shall be licensed as an agency if the insurance organization acts as:

- (1) a producer;
- (2) a surplus lines producer;
- (3) a limited line producer;
- (4) a consultant;
- (5) a managing general agent; or
- (6) a reinsurance intermediary.

Amended by Chapter 253, 2012 General Session

**31A-23a-302. Agency designations.**

(1) An agency shall designate an individual that has an individual producer, surplus lines producer, limited line producer, consultant, managing general agent, or reinsurance intermediary license to act on the agency's behalf in order for the licensee to do business for the agency in this state.

(2) An agency shall report to the commissioner, at intervals and in the form the commissioner establishes by rule:

- (a) a new designation; and
- (b) a terminated designation.

(3) (a) An agency licensed under this chapter shall report to the commissioner the cause of termination of a designation if:

(i) the reason for termination is a reason described in Subsection 31A-23a-111(5)(b); or

(ii) the agency has knowledge that the individual licensee is found to have engaged in an activity described in Subsection 31A-23a-111(5)(b) by:

- (A) a court;
- (B) a government body; or

(C) a self-regulatory organization, which the commissioner may define by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) The information provided the commissioner under Subsection (3)(a) is a private record under Title 63G, Chapter 2, Government Records Access and Management Act.

(c) An agency is immune from civil action, civil penalty, or damages if the agency complies in good faith with this Subsection (3) in reporting to the commissioner the cause of termination of a designation.

(d) Notwithstanding any other provision in this section, an agency is not immune from an action or resulting penalty imposed on the reporting agency as a result of

proceedings brought by or on behalf of the department if the action is based on evidence other than the report submitted in compliance with this Subsection (3).

(4) An agency licensed under this chapter may act in a capacity for which it is licensed only through an individual who is licensed under this chapter to act in the same capacity.

(5) An agency licensed under this chapter shall designate and report to the commissioner in accordance with any rule made by the commissioner the name of the designated responsible licensed individual who has authority to act on behalf of the agency in the matters pertaining to compliance with this title and orders of the commissioner.

(6) If an agency designates a licensee in reports submitted under Subsection (2) or (5), there is a rebuttable presumption that the designated licensee acts on behalf of the agency.

(7) (a) When a license is held by an agency, both the agency itself and any individual designated under the agency license shall be considered to be the holder of the agency license for purposes of this section.

(b) If an individual designated under the agency license commits an act or fails to perform a duty that is a ground for suspending, revoking, or limiting the agency license, the commissioner may suspend, revoke, or limit the license of:

(i) the individual;

(ii) the agency, if the agency:

(A) is reckless or negligent in its supervision of the individual; or

(B) knowingly participates in the act or failure to act that is the ground for suspending, revoking, or limiting the license; or

(iii) (A) the individual; and

(B) the agency if the agency meets the requirements of Subsection (7)(b)(ii).

Amended by Chapter 253, 2012 General Session

**31A-23a-401. Disclosure of conflicting interests.**

(1) (a) Except as provided under Subsection (1)(b):

(i) a licensee under this chapter may not act in the same or any directly related transaction as:

(A) a producer for the insured or consultant; and

(B) producer for the insurer; and

(ii) a producer for the insured or consultant may not recommend or encourage the purchase of insurance from or through an insurer or other producer:

(A) of which the producer for the insured or consultant or producer for the insured's or consultant's spouse is an owner, executive, or employee; or

(B) to which the producer for the insured or consultant has the type of relation that a material benefit would accrue to the producer for the insured or consultant or spouse as a result of the purchase.

(b) Subsection (1)(a) does not apply if the following three conditions are met:

(i) Prior to performing the consulting services, the producer for the insured or consultant shall disclose to the client, prominently, in writing:

(A) the producer for the insured's or consultant's interest as a producer for the



insurer, or the relationship to an insurer or other producer; and

(B) that as a result of those interests, the producer for the insured's or the consultant's recommendations should be given appropriate scrutiny.

(ii) The producer for the insured's or consultant's fee shall be agreed upon, in writing, after the disclosure required under Subsection (1)(b)(i), but before performing the requested services.

(iii) Any report resulting from requested services shall contain a copy of the disclosure made under Subsection (1)(b)(i).

(2) A licensee under this chapter may not act as to the same client as both a producer for the insurer and a producer for the insured without the client's prior written consent based on full disclosure.

(3) Whenever a person applies for insurance coverage through a producer for the insured, the producer for the insured shall disclose to the applicant, in writing, that the producer for the insured is not the producer for the insurer or the potential insurer. This disclosure shall also inform the applicant that the applicant likely does not have the benefit of an insurer being financially responsible for the conduct of the producer for the insured.

(4) If a licensee is subject to both this section and Subsection 31A-23a-501(4), the licensee shall provide the disclosure required under each statute.

Amended by Chapter 12, 2009 General Session

**31A-23a-402. Unfair marketing practices -- Communication -- Unfair discrimination -- Coercion or intimidation -- Restriction on choice.**

(1) (a) (i) Any of the following may not make or cause to be made any communication that contains false or misleading information, relating to an insurance product or contract, any insurer, or any licensee under this title, including information that is false or misleading because it is incomplete:

(A) a person who is or should be licensed under this title;

(B) an employee or producer of a person described in Subsection (1)(a)(i)(A);

(C) a person whose primary interest is as a competitor of a person licensed under this title; and

(D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

(ii) As used in this Subsection (1), "false or misleading information" includes:

(A) assuring the nonobligatory payment of future dividends or refunds of unused premiums in any specific or approximate amounts, but reporting fully and accurately past experience is not false or misleading information; and

(B) with intent to deceive a person examining it:

(I) filing a report;

(II) making a false entry in a record; or

(III) wilfully refraining from making a proper entry in a record.

(iii) A licensee under this title may not:

(A) use any business name, slogan, emblem, or related device that is misleading or likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee already in business; or

(B) use any advertisement or other insurance promotional material that would

cause a reasonable person to mistakenly believe that a state or federal government agency, including the Health Insurance Exchange, also called the "Utah Health Exchange," created in Section 63M-1-2504, the Comprehensive Health Insurance Pool created in Chapter 29, Comprehensive Health Insurance Pool Act, and the Children's Health Insurance Program created in Title 26, Chapter 40, Utah Children's Health Insurance Act:

- (I) is responsible for the insurance sales activities of the person;
- (II) stands behind the credit of the person;
- (III) guarantees any returns on insurance products of or sold by the person; or
- (IV) is a source of payment of any insurance obligation of or sold by the person.

(iv) A person who is not an insurer may not assume or use any name that deceptively implies or suggests that person is an insurer.

(v) A person other than persons licensed as health maintenance organizations under Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to itself.

(b) A licensee's violation creates a rebuttable presumption that the violation was also committed by the insurer if:

(i) the licensee under this title distributes cards or documents, exhibits a sign, or publishes an advertisement that violates Subsection (1)(a), with reference to a particular insurer:

- (A) that the licensee represents; or
- (B) for whom the licensee processes claims; and

(ii) the cards, documents, signs, or advertisements are supplied or approved by that insurer.

(2) (a) A title insurer, individual title insurance producer, or agency title insurance producer or any officer or employee of the title insurer, individual title insurance producer, or agency title insurance producer may not pay, allow, give, or offer to pay, allow, or give, directly or indirectly, as an inducement to obtaining any title insurance business:

(i) any rebate, reduction, or abatement of any rate or charge made incident to the issuance of the title insurance;

(ii) any special favor or advantage not generally available to others;

(iii) any money or other consideration, except if approved under Section 31A-2-405; or

(iv) material inducement.

(b) "Charge made incident to the issuance of the title insurance" includes escrow charges, and any other services that are prescribed in rule by the Title and Escrow Commission after consultation with the commissioner and subject to Section 31A-2-404.

(c) An insured or any other person connected, directly or indirectly, with the transaction may not knowingly receive or accept, directly or indirectly, any benefit referred to in Subsection (2)(a), including:

(i) a person licensed under Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act;

(ii) a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act;

- (iii) a builder;
- (iv) an attorney; or
- (v) an officer, employee, or agent of a person listed in this Subsection (2)(c)(iii).

(3) (a) An insurer may not unfairly discriminate among policyholders by charging different premiums or by offering different terms of coverage, except on the basis of classifications related to the nature and the degree of the risk covered or the expenses involved.

(b) Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, blanket, or franchise policy, and the terms of those policies are not unfairly discriminatory merely because they are more favorable than in similar individual policies.

(4) (a) This Subsection (4) applies to:

- (i) a person who is or should be licensed under this title;
- (ii) an employee of that licensee or person who should be licensed;
- (iii) a person whose primary interest is as a competitor of a person licensed under this title; and

(iv) one acting on behalf of any person described in Subsections (4)(a)(i) through (iii).

(b) A person described in Subsection (4)(a) may not commit or enter into any agreement to participate in any act of boycott, coercion, or intimidation that:

(i) tends to produce:

- (A) an unreasonable restraint of the business of insurance; or
- (B) a monopoly in that business; or

(ii) results in an applicant purchasing or replacing an insurance contract.

(5) (a) (i) Subject to Subsection (5)(a)(ii), a person may not restrict in the choice of an insurer or licensee under this chapter, another person who is required to pay for insurance as a condition for the conclusion of a contract or other transaction or for the exercise of any right under a contract.

(ii) A person requiring coverage may reserve the right to disapprove the insurer or the coverage selected on reasonable grounds.

(b) The form of corporate organization of an insurer authorized to do business in this state is not a reasonable ground for disapproval, and the commissioner may by rule specify additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from declining an application for insurance.

(6) A person may not make any charge other than insurance premiums and premium financing charges for the protection of property or of a security interest in property, as a condition for obtaining, renewing, or continuing the financing of a purchase of the property or the lending of money on the security of an interest in the property.

(7) (a) A licensee under this title may not refuse or fail to return promptly all indicia of agency to the principal on demand.

(b) A licensee whose license is suspended, limited, or revoked under Section 31A-2-308, 31A-23a-111, or 31A-23a-112 may not refuse or fail to return the license to the commissioner on demand.

(8) (a) A person may not engage in an unfair method of competition or any other unfair or deceptive act or practice in the business of insurance, as defined by the

commissioner by rule, after a finding that the method of competition, the act, or the practice:

- (i) is misleading;
- (ii) is deceptive;
- (iii) is unfairly discriminatory;
- (iv) provides an unfair inducement; or
- (v) unreasonably restrains competition.

(b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the Title and Escrow Commission shall make rules, subject to Section 31A-2-404, that define an unfair method of competition or unfair or deceptive act or practice after a finding that the method of competition, the act, or the practice:

- (i) is misleading;
- (ii) is deceptive;
- (iii) is unfairly discriminatory;
- (iv) provides an unfair inducement; or
- (v) unreasonably restrains competition.

Amended by Chapter 319, 2013 General Session

#### **31A-23a-402.5. Inducements.**

(1) (a) Except as provided in Subsection (2), a producer, consultant, or other licensee under this title, or an officer or employee of a licensee, may not induce a person to enter into, continue, or terminate an insurance contract by offering a benefit that is not:

- (i) specified in the insurance contract; or
- (ii) directly related to the insurance contract.

(b) An insurer may not make or knowingly allow an agreement of insurance that is not clearly expressed in the insurance contract to be issued or renewed.

(c) A licensee under this title may not absorb the tax under Section 31A-3-301.

(2) This section does not apply to a title insurer, an individual title insurance producer, or agency title insurance producer, or an officer or employee of a title insurer, an individual title insurance producer, or an agency title insurance producer.

(3) Items not prohibited by Subsection (1) include an insurer:

(a) reducing premiums because of expense savings;

(b) providing to a policyholder or insured one or more incentives, as defined by the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to participate in a program or activity designed to reduce claims or claim expenses, including:

(i) a premium discount offered to a small or large employer group based on a wellness program if:

(A) the premium discount for the employer group does not exceed 20% of the group premium; and

(B) the premium discount based on the wellness program is offered uniformly by the insurer to all employer groups in the large or small group market;

(ii) a premium discount offered to employees of a small or large employer group in an amount that does not exceed federal limits on wellness program incentives; or

(iii) a combination of premium discounts offered to the employer group and the employees of an employer group, based on a wellness program, if:

(A) the premium discounts for the employer group comply with Subsection (3)(b)(i); and

(B) the premium discounts for the employees of an employer group comply with Subsection (3)(b)(ii); or

(c) receiving premiums under an installment payment plan.

(4) Items not prohibited by Subsection (1) include a producer, consultant, or other licensee, or an officer or employee of a licensee, either directly or through a third party:

(a) engaging in a usual kind of social courtesy if receipt of the social courtesy is not conditioned on a quote or the purchase of a particular insurance product;

(b) extending credit on a premium to the insured:

(i) without interest, for no more than 90 days from the effective date of the insurance contract;

(ii) for interest that is not less than the legal rate under Section 15-1-1, on the unpaid balance after the time period described in Subsection (4)(b)(i); and

(iii) except that an installment or payroll deduction payment of premiums on an insurance contract issued under an insurer's mass marketing program is not considered an extension of credit for purposes of this Subsection (4)(b);

(c) preparing or conducting a survey that:

(i) is directly related to an accident and health insurance policy purchased from the licensee; or

(ii) is used by the licensee to assess the benefit needs and preferences of insureds, employers, or employees directly related to an insurance product sold by the licensee;

(d) providing limited human resource services that are directly related to an insurance product sold by the licensee, including:

(i) answering questions directly related to:

(A) an employee benefit offering or administration, if the insurance product purchased from the licensee is accident and health insurance or health insurance; and

(B) employment practices liability, if the insurance product offered by or purchased from the licensee is property or casualty insurance; and

(ii) providing limited human resource compliance training and education directly pertaining to an insurance product purchased from the licensee;

(e) providing the following types of information or guidance:

(i) providing guidance directly related to compliance with federal and state laws for an insurance product purchased from the licensee;

(ii) providing a workshop or seminar addressing an insurance issue that is directly related to an insurance product purchased from the licensee; or

(iii) providing information regarding:

(A) employee benefit issues;

(B) directly related insurance regulatory and legislative updates; or

(C) similar education about an insurance product sold by the licensee and how the insurance product interacts with tax law;

(f) preparing or providing a form that is directly related to an insurance product

purchased from, or offered by, the licensee;

(g) preparing or providing documents directly related to a premium only cafeteria plan within the meaning of Section 125, Internal Revenue Code, or a flexible spending account, but not providing ongoing administration of a flexible spending account;

(h) providing enrollment and billing assistance, including:

(i) providing benefit statements or new hire insurance benefits packages; and

(ii) providing technology services such as an electronic enrollment platform or application system;

(i) communicating coverages in writing and in consultation with the insured and employees;

(j) providing employee communication materials and notifications directly related to an insurance product purchased from a licensee;

(k) providing claims management and resolution to the extent permitted under the licensee's license;

(l) providing underwriting or actuarial analysis or services;

(m) negotiating with an insurer regarding the placement and pricing of an insurance product;

(n) recommending placement and coverage options;

(o) providing a health fair or providing assistance or advice on establishing or operating a wellness program, but not providing any payment for or direct operation of the wellness program;

(p) providing COBRA and Utah mini-COBRA administration, consultations, and other services directly related to an insurance product purchased from the licensee;

(q) assisting with a summary plan description, including providing a summary plan description wraparound;

(r) providing information necessary for the preparation of documents directly related to the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001, et seq., as amended;

(s) providing information or services directly related to the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936, as amended, such as services directly related to health care access, portability, and renewability when offered in connection with accident and health insurance sold by a licensee;

(t) sending proof of coverage to a third party with a legitimate interest in coverage;

(u) providing information in a form approved by the commissioner and directly related to determining whether an insurance product sold by the licensee meets the requirements of a third party contract that requires or references insurance coverage;

(v) facilitating risk management services directly related to property and casualty insurance products sold or offered for sale by the licensee, including:

(i) risk management;

(ii) claims and loss control services;

(iii) risk assessment consulting, including analysis of:

(A) employer's job descriptions; or

(B) employer's safety procedures or manuals; and

(iv) providing information and training on best practices;

(w) otherwise providing services that are legitimately part of servicing an insurance product purchased from a licensee; and

(x) providing other directly related services approved by the department.

(5) An inducement prohibited under Subsection (1) includes a producer, consultant, or other licensee, or an officer or employee of a licensee:

(a) (i) providing a rebate;

(ii) paying the salary of an employee of a person who purchases an insurance product from the licensee; or

(iii) if the licensee is an insurer, or a third party administrator who contracts with an insurer, paying the salary for an onsite staff member to perform an act prohibited under Subsection (5)(b)(xii); or

(b) engaging in one or more of the following unless a fee is paid in accordance with Subsection (8):

(i) performing background checks of prospective employees;

(ii) providing legal services by a person licensed to practice law;

(iii) performing drug testing that is directly related to an insurance product purchased from the licensee;

(iv) preparing employer or employee handbooks, except that a licensee may:

(A) provide information for a medical benefit section of an employee handbook;

(B) provide information for the section of an employee handbook directly related to an employment practices liability insurance product purchased from the licensee; or

(C) prepare or print an employee benefit enrollment guide;

(v) providing job descriptions, postings, and applications for a person;

(vi) providing payroll services;

(vii) providing performance reviews or performance review training;

(viii) providing union advice;

(ix) providing accounting services;

(x) providing data analysis information technology programs, except as provided in Subsection (4)(h)(ii);

(xi) providing administration of health reimbursement accounts or health savings accounts; or

(xii) if the licensee is an insurer, or a third party administrator who contracts with an insurer, the insurer issuing an insurance policy that lists in the insurance policy one or more of the following prohibited benefits:

(A) performing background checks of prospective employees;

(B) providing legal services by a person licensed to practice law;

(C) performing drug testing that is directly related to an insurance product purchased from the insurer;

(D) preparing employer or employee handbooks;

(E) providing job descriptions postings, and applications;

(F) providing payroll services;

(G) providing performance reviews or performance review training;

(H) providing union advice;

(I) providing accounting services;

(J) providing discrimination testing; or

(K) providing data analysis information technology programs.

(6) A producer, consultant, or other licensee or an officer or employee of a licensee shall itemize and bill separately from any other insurance product or service offered or provided under Subsection (5)(b).

(7) (a) A de minimis gift or meal not to exceed a fair market value of \$25 for each individual receiving the gift or meal is presumed to be a social courtesy not conditioned on a quote or purchase of a particular insurance product for purposes of Subsection (4)(a).

(b) Notwithstanding Subsection (4)(a), a de minimis gift or meal not to exceed \$10 may be conditioned on receipt of a quote of a particular insurance product.

(8) If as provided under Subsection (5)(b) a producer, consultant, or other licensee is paid a fee to provide an item listed in Subsection (5)(b), the licensee shall comply with Subsection 31A-23a-501(2) in charging the fee, except that the fee paid for the item shall equal or exceed the fair market value of the item.

(9) For purposes of this section, "fair market value" is determined on the basis of what an individual insured or policyholder would pay on the open market for that item.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

### **31A-23a-403. Inherent unsuitability.**

(1) If the commissioner finds after a hearing that a certain type of accident and health insurance, life insurance, or annuity product is inherently unsuitable for persons of certain ages or in certain conditions of health, the commissioner shall make a rule declaring the accident and health insurance, life insurance, or annuity product as inherently unsuitable for persons of certain ages or in certain conditions of health.

(2) An accident and health insurance, life insurance, or annuity product that is subject to the rule may not be sold to a person for whom the product has been determined as inherently unsuitable unless that person purchasing the product signs a receipt acknowledging having received a statement that expresses that the product has been determined by the commissioner to be inherently unsuitable for persons of certain ages or in certain conditions of health.

(3) Unless the insurer or its appointed licensee establishes that its sale of coverage is inconsistent with the rule made under Subsection (1) is due to excusable neglect, the purchaser may treat the sale as voidable, if acted upon by the insured within a two-year period from the date of sale.

Renumbered and Amended by Chapter 298, 2003 General Session

### **31A-23a-405. Insurer liability.**

(1) As used in this section, "insurer" includes bail bond surety companies as defined in Section 31A-35-102.

(2) There is a rebuttable presumption that every insurer is bound by any act of its appointed licensee performed in this state that is within the scope of the appointed licensee's actual (express or implied) or apparent authority, until the insurer has canceled the appointed licensee's appointment and has made reasonable efforts to recover from the appointed licensee its policy forms and other indicia of agency.



Reasonable efforts include a formal demand in writing for return of the indicia, and notice to the commissioner if the appointed licensee does not promptly comply with the demand. This Subsection (2) neither waives any common law defense available to insurers, nor precludes the insured from seeking redress against the appointed licensee individually or jointly against the insurer and licensee.

(3) When a licensee under this chapter with authority to bind more than one insurer on a particular risk agrees to bind coverage on a particular risk, but fails to outwardly indicate the insurer with which the risk is placed, and before the risk is placed with a particular insurer a loss occurs, if there is no conclusive admissible evidence indicating the insurer with which the licensee exercised his binding authority, a court may equitably apportion the loss among all insurers with which the licensee had binding authority as to the particular type of risk.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-406. Title insurance producer's business.**

(1) An individual title insurance producer or agency title insurance producer may do escrow involving real property transactions if all of the following exist:

(a) the individual title insurance producer or agency title insurance producer is licensed with:

- (i) the title line of authority; and
- (ii) the escrow subline of authority;

(b) the individual title insurance producer or agency title insurance producer is appointed by a title insurer authorized to do business in the state;

(c) the individual title insurance producer or agency title insurance producer issues one or more of the following as part of the transaction:

- (i) an owner's policy of title insurance; or
- (ii) a lender's policy of title insurance;

(d) money deposited with the individual title insurance producer or agency title insurance producer in connection with any escrow:

(i) is deposited:

(A) in a federally insured financial institution; and

(B) in a trust account that is separate from all other trust account money that is not related to real estate transactions;

(ii) is the property of the one or more persons entitled to the money under the provisions of the escrow; and

(iii) is segregated escrow by escrow in the records of the individual title insurance producer or agency title insurance producer;

(e) earnings on money held in escrow may be paid out of the escrow account to any person in accordance with the conditions of the escrow;

(f) the escrow does not require the individual title insurance producer or agency title insurance producer to hold:

(i) construction money; or

(ii) money held for exchange under Section 1031, Internal Revenue Code; and

(g) the individual title insurance producer or agency title insurance producer shall maintain a physical office in Utah staffed by a person with an escrow subline of

authority who processes the escrow.

(2) Notwithstanding Subsection (1), an individual title insurance producer or agency title insurance producer may engage in the escrow business if:

(a) the escrow involves:

(i) a mobile home;

(ii) a grazing right;

(iii) a water right; or

(iv) other personal property authorized by the commissioner; and

(b) the individual title insurance producer or agency title insurance producer complies with this section except for Subsection (1)(c).

(3) Money held in escrow:

(a) is not subject to any debts of the individual title insurance producer or agency title insurance producer;

(b) may only be used to fulfill the terms of the individual escrow under which the money is accepted; and

(c) may not be used until the conditions of the escrow are met.

(4) Assets or property other than escrow money received by an individual title insurance producer or agency title insurance producer in accordance with an escrow shall be maintained in a manner that will:

(a) reasonably preserve and protect the asset or property from loss, theft, or damages; and

(b) otherwise comply with the general duties and responsibilities of a fiduciary or bailee.

(5) (a) A check from the trust account described in Subsection (1)(d) may not be drawn, executed, or dated, or money otherwise disbursed unless the segregated escrow account from which money is to be disbursed contains a sufficient credit balance consisting of collected and cleared money at the time the check is drawn, executed, or dated, or money is otherwise disbursed.

(b) As used in this Subsection (5), money is considered to be "collected and cleared," and may be disbursed as follows:

(i) cash may be disbursed on the same day the cash is deposited;

(ii) a wire transfer may be disbursed on the same day the wire transfer is deposited; and

(iii) the proceeds of one or more of the following financial instruments may be disbursed on the same day the financial instruments are deposited if received from a single party to the real estate transaction and if the aggregate of the financial instruments for the real estate transaction is less than \$10,000:

(A) a cashier's check, certified check, or official check that is drawn on an existing account at a federally insured financial institution;

(B) a check drawn on the trust account of a principal broker or associate broker licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, if the individual title insurance producer or agency title insurance producer has reasonable and prudent grounds to believe sufficient money will be available from the trust account on which the check is drawn at the time of disbursement of proceeds from the individual title insurance producer or agency title insurance producer's escrow account;

(C) a personal check not to exceed \$500 per closing; or

(D) a check drawn on the escrow account of another individual title insurance producer or agency title insurance producer, if the individual title insurance producer or agency title insurance producer in the escrow transaction has reasonable and prudent grounds to believe that sufficient money will be available for withdrawal from the account upon which the check is drawn at the time of disbursement of money from the escrow account of the individual title insurance producer or agency title insurance producer in the escrow transaction.

(c) A check or deposit not described in Subsection (5)(b) may be disbursed:

(i) within the time limits provided under the Expedited Funds Availability Act, 12 U.S.C. Sec. 4001 et seq., as amended, and related regulations of the Federal Reserve System; or

(ii) upon notification from the financial institution to which the money has been deposited that final settlement has occurred on the deposited financial instrument.

(6) An individual title insurance producer or agency title insurance producer shall maintain a record of a receipt or disbursement of escrow money.

(7) An individual title insurance producer or agency title insurance producer shall comply with:

(a) Section 31A-23a-409;

(b) Title 46, Chapter 1, Notaries Public Reform Act; and

(c) any rules adopted by the Title and Escrow Commission, subject to Section 31A-2-404, that govern escrows.

(8) If an individual title insurance producer or agency title insurance producer conducts a search for real estate located in the state, the individual title insurance producer or agency title insurance producer shall conduct a reasonable search of the public records.

Amended by Chapter 319, 2013 General Session

#### **31A-23a-406.5. Conduct of escrow.**

(1) Only an escrow agent or a title insurer in compliance with Subsection 31A-4-107(1)(a) and Section 31A-14-211 shall conduct escrow.

(2) Subsection (1) does not limit or expand the authority granted to:

(a) a person defined as an escrow agent in Section 7-22-101;

(b) a person licensed to practice law in Utah, if that person meets the requirements of Section 31A-23a-204;

(c) a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act; or

(d) a person licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

Enacted by Chapter 319, 2013 General Session

#### **31A-23a-407. Liability of title insurers for acts of title insurance producers.**

Any title company, represented by one or more individual title insurance producers appointed by an insurer or agency title insurance producers, is directly and primarily liable to others dealing with the individual title insurance producers or agency

title insurance producers for the receipt and disbursement of funds deposited in escrows with the individual title insurance producers appointed by an insurer or agency title insurance producers in all those transactions where a commitment or binder for or policy or contract of title insurance of that title insurer has been ordered, or a preliminary report of the title insurer has been issued or distributed. This liability does not modify, mitigate, impair, or affect the contractual obligations between the individual title insurance producers or agency title insurance producers and the title insurer.

Amended by Chapter 319, 2013 General Session

**31A-23a-408. Representations of agency.**

A person may not represent that the person is acting in behalf of an insurer unless a written agency contract is in effect giving the person authority from the insurer and the insurer appoints that person to act in behalf of the insurer.

Amended by Chapter 284, 2011 General Session

**31A-23a-409. Trust obligation for money collected.**

(1) (a) Subject to Subsection (7), a licensee is a trustee for money that is paid to, received by, or collected by a licensee for forwarding to insurers or to insureds.

(b) (i) Except as provided in Subsection (1)(b)(ii), a licensee may not commingle trust funds with:

- (A) the licensee's own money; or
- (B) money held in any other capacity.

(ii) This Subsection (1)(b) does not apply to:

- (A) amounts necessary to pay bank charges; and
- (B) money paid by insureds and belonging in part to the licensee as a fee or commission.

(c) Except as provided under Subsection (4), a licensee owes to insureds and insurers the fiduciary duties of a trustee with respect to money to be forwarded to insurers or insureds through the licensee.

(d) (i) Unless money is sent to the appropriate payee by the close of the next business day after their receipt, the licensee shall deposit them in an account authorized under Subsection (2).

(ii) Money deposited under this Subsection (1)(d) shall remain in an account authorized under Subsection (2) until sent to the appropriate payee.

(2) Money required to be deposited under Subsection (1) shall be deposited:

(a) in a federally insured trust account in a depository institution, as defined in Section 7-1-103, which:

(i) has an office in this state, if the licensee depositing the money is a resident licensee;

(ii) has federal deposit insurance; and

(iii) is authorized by its primary regulator to engage in the trust business, as defined by Section 7-5-1, in this state; or

(b) in some other account, approved by the commissioner by rule or order, providing safety comparable to federally insured trust accounts.

(3) It is not a violation of Subsection (2)(a) if the amounts in the accounts exceed the amount of the federal insurance on the accounts.

(4) A trust account into which money is deposited may be interest bearing. The interest accrued on the account may be paid to the licensee, so long as the licensee otherwise complies with this section and with the contract with the insurer.

(5) A depository institution or other organization holding trust funds under this section may not offset or impound trust account funds against debts and obligations incurred by the licensee.

(6) A licensee who, not being lawfully entitled to do so, diverts or appropriates any portion of the money held under Subsection (1) to the licensee's own use, is guilty of theft under Title 76, Chapter 6, Part 4, Theft. Section 76-6-412 applies in determining the classification of the offense. Sanctions under Section 31A-2-308 also apply.

(7) A nonresident licensee:

(a) shall comply with Subsection (1)(a) by complying with the trust account requirements of the nonresident licensee's home state; and

(b) is not required to comply with the other provisions of this section.

Amended by Chapter 253, 2012 General Session

**31A-23a-410. Insurer's liability if insured pays premium to a licensee or group policyholder.**

(1) Subject to Subsections (2) and (5), as between the insurer and the insured, the insurer is considered to have received the premium and is liable to the insured for losses covered by the insurance and for any unearned premiums upon cancellation of the insurance if an insurer, including a surplus lines insurer:

(a) assumes a risk; and

(b) the premium for that insurance is received by:

(i) a licensee who placed the insurance;

(ii) a group policyholder;

(iii) an employer who deducts part or all of the premium from an employee's wages or salary; or

(iv) an employer who pays all or part of the premium for an employee.

(2) Subsection (1) does not apply if:

(a) the insured pays a licensee, knowing the licensee does not intend to submit the premium to the insurer; or

(b) the insured has premium withheld from the insured's wages or salary knowing the employer does not intend to submit it to the insurer.

(3) (a) In the case of an employer who has received the premium by deducting all or part of it from the wages or salaries of the certificate holders, the insurer may terminate its liability by giving notice of coverage termination to:

(i) the certificate holders;

(ii) the policyholder; and

(iii) the producer, if any, for the policy.

(b) The insurer may not send the notice required by Subsection (3)(a) to a certificate holder before 20 days after the day on which premium is due and unpaid.

(c) The liability of the insurer for the losses covered by the insurance terminates at the later of:

(i) the last day of the coverage period for which premium has been withheld by the employer;

(ii) 10 days after the date the insurer mails notice to the certificate holder that coverage has terminated; or

(iii) if the insurer fails to provide notice as required by this Subsection (3), 45 days from the last date for which premium is received.

(4) Despite an employer's collection of premium under Subsection (1), the responsibility of an insurer to continue to cover the losses covered by the insurance to group policy certificate holders terminates upon the effective date of notice from the policyholder that:

(a) coverage of a similar kind and quality has been obtained from another insurer; or

(b) the policyholder is electing to voluntarily terminate the certificate holder's coverage and has given the employees notice of the termination.

(5) If the insurer is obligated to pay a claim pursuant to this section, the licensee or employer who received the premium and failed to forward it is obligated to the insurer for the entire unpaid premium due under the policy together with reasonable expenses of suit and reasonable attorney fees.

(6) If, under an employee health insurance plan, an employee builds up credit for future coverage because the employee has not used the policy protection, or in some other way, the insurer is obligated to the employee for that future coverage earned while the policy was in full effect.

(7) (a) Notwithstanding that an insurer is liable for losses as provided in this section, this section applies only to apportion the liability for the losses described in this section.

(b) This section does not:

(i) extend a policy or coverage beyond its date of termination; or

(ii) alter or amend a provision of a policy.

Amended by Chapter 349, 2009 General Session

**31A-23a-411.1. Person's liability if premium received is not forwarded to the insurer.**

A person commits insurance fraud as described in Subsection 31A-31-103(1)(f) if that person knowingly fails to forward to the insurer a premium:

(1) received from one of the following in partial or total payment of the premium due from:

(a) an applicant;

(b) a policyholder; or

(c) a certificate holder; or

(2) collected from or on behalf of an insured employee under an insured employee benefit plan.

Enacted by Chapter 252, 2003 General Session

**31A-23a-412. Place of business and residence address -- Records.**

(1) (a) A licensee under this chapter shall register and maintain with the commissioner:

(i) the address and telephone numbers of the licensee's principal place of business; and

(ii) a valid business email address at which the commissioner may contact the licensee.

(b) If a licensee is an individual, in addition to complying with Subsection (1)(a) the individual shall register and maintain with the commissioner the individual's residence address and telephone number.

(c) A licensee shall notify the commissioner within 30 days of a change of any of the following required to be registered with the commissioner under this section:

(i) an address;

(ii) a telephone number; or

(iii) a business email address.

(2) (a) Except as provided under Subsection (3), a licensee under this chapter shall keep at the principal place of business address registered under Subsection (1), separate and distinct books and records of the transactions consummated under the Utah license.

(b) The books and records described in Subsection (2)(a) shall:

(i) be in an organized form;

(ii) be available to the commissioner for inspection upon reasonable notice; and

(iii) include all of the following:

(A) if the licensee is a producer, surplus lines producer, limited line producer, consultant, managing general agent, or reinsurance intermediary:

(I) a record of each insurance contract procured by or issued through the licensee, with the names of insurers and insureds, the amount of premium and commissions or other compensation, and the subject of the insurance;

(II) the names of any other producers, surplus lines producers, limited line producers, consultants, managing general agents, or reinsurance intermediaries from whom business is accepted, and of persons to whom commissions or allowances of any kind are promised or paid; and

(III) a record of the consumer complaints forwarded to the licensee by an insurance regulator;

(B) if the licensee is a consultant, a record of each agreement outlining the work performed and the fee for the work; and

(C) any additional information which:

(I) is customary for a similar business; or

(II) may reasonably be required by the commissioner by rule.

(3) Subsection (2) is satisfied if the books and records specified in Subsection (2) can be obtained immediately from a central storage place or elsewhere by on-line computer terminals located at the registered address.

(4) A licensee who represents only a single insurer satisfies Subsection (2) if the insurer maintains the books and records pursuant to Subsection (2) at a place satisfying Subsections (1) and (5).

(5) (a) The books and records maintained under Subsection (2) or Section

31A-23a-413 shall be available for the inspection of the commissioner during the business hours for a period of time after the date of the transaction as specified by the commissioner by rule, but in no case for less than the current calendar year plus three years.

(b) Discarding books and records after the applicable record retention period has expired does not place the licensee in violation of a later-adopted longer record retention period.

Amended by Chapter 253, 2012 General Session

**31A-23a-413. Title insurance producer's annual report.**

An agency title insurance producer and an individual title insurance producer who has not been designated by an agency title insurance producer shall annually file with the commissioner, by a date and in a form the commissioner specifies by rule, a verified statement of the agency title insurance producer's or individual title insurance producer's financial condition, transactions, and affairs as of the end of the preceding calendar year.

Amended by Chapter 319, 2013 General Session

**31A-23a-414. Consultant's duty to report illegal insurance.**

Section 31A-15-110 applies to a consultant's duty to report illegal insurance.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-415. Assessment on agency title insurance producers or title insurers -- Account created.**

- (1) For purposes of this section:
  - (a) "Premium" is as defined in Subsection 59-9-101(3).
  - (b) "Title insurer" means a person:
    - (i) making any contract or policy of title insurance as:
      - (A) insurer;
      - (B) guarantor; or
      - (C) surety;
    - (ii) proposing to make any contract or policy of title insurance as:
      - (A) insurer;
      - (B) guarantor; or
      - (C) surety; or
    - (iii) transacting or proposing to transact any phase of title insurance, including:
      - (A) soliciting;
      - (B) negotiating preliminary to execution;
      - (C) executing of a contract of title insurance;
      - (D) insuring; and
      - (E) transacting matters subsequent to the execution of the contract and arising out of the contract.
  - (c) "Utah risks" means insuring, guaranteeing, or indemnifying with regard to



real or personal property located in Utah, an owner of real or personal property, the holders of liens or encumbrances on that property, or others interested in the property against loss or damage suffered by reason of:

(i) liens or encumbrances upon, defects in, or the unmarketability of the title to the property; or

(ii) invalidity or unenforceability of any liens or encumbrances on the property.

(2) (a) The commissioner may assess each title insurer, each individual title insurance producer who is not designated by an agency title insurance producer, and each agency title insurance producer an annual assessment:

(i) determined by the Title and Escrow Commission:

(A) after consultation with the commissioner; and

(B) in accordance with this Subsection (2); and

(ii) to be used for the purposes described in Subsection (3).

(b) An agency title insurance producer and individual title insurance producer who is not designated by an agency title insurance producer shall be assessed up to:

(i) \$250 for the first office in each county in which the agency title insurance producer or individual title insurance producer maintains an office; and

(ii) \$150 for each additional office the agency title insurance producer or individual title insurance producer maintains in the county described in Subsection (2)(b)(i).

(c) A title insurer shall be assessed up to:

(i) \$250 for the first office in each county in which the title insurer maintains an office;

(ii) \$150 for each additional office the title insurer maintains in the county described in Subsection (2)(c)(i); and

(iii) an amount calculated by:

(A) aggregating the assessments imposed on:

(I) agency title insurance producers and individual title insurance producers under Subsection (2)(b); and

(II) title insurers under Subsections (2)(c)(i) and (2)(c)(ii);

(B) subtracting the amount determined under Subsection (2)(c)(iii)(A) from the total costs and expenses determined under Subsection (2)(d); and

(C) multiplying:

(I) the amount calculated under Subsection (2)(c)(iii)(B); and

(II) the percentage of total premiums for title insurance on Utah risk that are premiums of the title insurer.

(d) Notwithstanding Section 31A-3-103 and subject to Section 31A-2-404, the Title and Escrow Commission by rule shall establish the amount of costs and expenses described under Subsection (3) that will be covered by the assessment, except the costs or expenses to be covered by the assessment may not exceed \$80,000 annually.

(3) (a) Money received by the state under this section shall be deposited into the Title Licensee Enforcement Restricted Account.

(b) There is created in the General Fund a restricted account known as the "Title Licensee Enforcement Restricted Account."

(c) The Title Licensee Enforcement Restricted Account shall consist of the money received by the state under this section.

(d) The commissioner shall administer the Title Licensee Enforcement Restricted Account. Subject to appropriations by the Legislature, the commissioner shall use the money deposited into the Title Licensee Enforcement Restricted Account only to pay for a cost or expense incurred by the department in the administration, investigation, and enforcement of this part and Part 5, Compensation of Producers and Consultants, related to:

- (i) the marketing of title insurance; and
- (ii) audits of agency title insurance producers.

(e) An appropriation from the Title Licensee Enforcement Restricted Account is nonlapsing.

(4) The assessment imposed by this section shall be in addition to any premium assessment imposed under Subsection 59-9-101(3).

Amended by Chapter 319, 2013 General Session

**31A-23a-416. Solicitations to loan applicants.**

(1) (a) A person authorized to engage in insurance activities in this state shall prominently disclose in writing the information described in Subsection (1)(b) to a person seeking an extension of credit if:

(i) the person authorized to engage in insurance activities also extends credit directly or through a subsidiary or an affiliate;

(ii) the person requires a customer to obtain insurance in connection with an extension of credit; and

(iii) the person offers to the person seeking an extension of credit the line of credit insurance required in connection with the extension of credit.

(b) The disclosure required by Subsection (1)(a) shall be in a form substantially similar to the following. "You may obtain insurance required in connection with your extension of credit from any insurance producer or approved insurer that sells such insurance. Your choice of insurance provider will not affect our credit decision or your credit terms."

(c) The person shall make the required disclosure under Subsection (1)(a):

(i) at the time of written application for an extension of credit; or

(ii) if there is no written application, before the closing of the extension of credit.

(2) The disclosure required by Subsection (1)(c)(ii) may be in a verbal, electronic, or other unwritten form if a printed disclosure is included with the first printed statement of terms and conditions of the extension of credit sent to the person seeking the extension of credit.

(3) This section does not apply when:

(a) a person is contacting a person in the course of direct or mass marketing to a group of persons in a manner that bears no relation to the person's application for an extension of credit or credit decision; and

(b) an agreement for the extension of credit is changed or extended, if the person who originally sought the extension of credit is not required to purchase new or additional insurance.

(4) (a) For purposes of this section, "approved insurer" means an insurer that is approved to issue insurance related to the extension of credit by the person that

extends the credit.

(b) The commissioner shall make rules establishing standards that govern the approval under Subsection (4)(a) of an insurer by a person that extends credit.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-417. Financial services insurance activities regulation.**

(1) It is the intent of the Legislature that the regulation of insurance activities of any person in this state be based on functional regulation principles established in the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102.

(2) The insurance activities of any person in this state shall be functionally regulated by the commissioner subject to Sections 104, 301-308, 501-507, and 509 of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102.

(3) Under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may adopt rules consistent with Section 104(d) of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, and the functional regulation of insurance activities of any person otherwise subject to the jurisdiction of the commissioner in this state described in Subsection (2).

(4) The commissioner shall consult and coordinate with the commissioner of the Department of Financial Institutions and the director of the Division of Securities for the purpose of assuring, to the extent possible, that the rules prescribed by the department are consistent and comparable with federal regulations governing the insurance, banking, and securities industries.

Amended by Chapter 382, 2008 General Session

**31A-23a-501. Licensee compensation.**

(1) As used in this section:

(a) "Commission compensation" includes funds paid to or credited for the benefit of a licensee from:

(i) commission amounts deducted from insurance premiums on insurance sold by or placed through the licensee;

(ii) commission amounts received from an insurer or another licensee as a result of the sale or placement of insurance; or

(iii) overrides, bonuses, contingent bonuses, or contingent commissions received from an insurer or another licensee as a result of the sale or placement of insurance.

(b) (i) "Compensation from an insurer or third party administrator" means commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes, or any other form of valuable consideration:

(A) whether or not payable pursuant to a written agreement; and

(B) received from:

(I) an insurer; or

(II) a third party to the transaction for the sale or placement of insurance.

(ii) "Compensation from an insurer or third party administrator" does not mean compensation from a customer that is:

(A) a fee or pass-through costs as provided in Subsection (1)(e); or  
(B) a fee or amount collected by or paid to the producer that does not exceed an amount established by the commissioner by administrative rule.

(c) (i) "Customer" means:

(A) the person signing the application or submission for insurance; or  
(B) the authorized representative of the insured actually negotiating the placement of insurance with the producer.

(ii) "Customer" does not mean a person who is a participant or beneficiary of:

(A) an employee benefit plan; or  
(B) a group or blanket insurance policy or group annuity contract sold, solicited, or negotiated by the producer or affiliate.

(d) (i) "Noncommission compensation" includes all funds paid to or credited for the benefit of a licensee other than commission compensation.

(ii) "Noncommission compensation" does not include charges for pass-through costs incurred by the licensee in connection with obtaining, placing, or servicing an insurance policy.

(e) "Pass-through costs" include:

(i) costs for copying documents to be submitted to the insurer; and

(ii) bank costs for processing cash or credit card payments.

(2) A licensee may receive from an insured or from a person purchasing an insurance policy, noncommission compensation if the noncommission compensation is stated on a separate, written disclosure.

(a) The disclosure required by this Subsection (2) shall:

(i) include the signature of the insured or prospective insured acknowledging the noncommission compensation;

(ii) clearly specify the amount or extent of the noncommission compensation;  
and

(iii) be provided to the insured or prospective insured before the performance of the service.

(b) Noncommission compensation shall be:

(i) limited to actual or reasonable expenses incurred for services; and

(ii) uniformly applied to all insureds or prospective insureds in a class or classes of business or for a specific service or services.

(c) A copy of the signed disclosure required by this Subsection (2) shall be maintained by any licensee who collects or receives the noncommission compensation or any portion of the noncommission compensation.

(d) All accounting records relating to noncommission compensation shall be maintained by the person described in Subsection (2)(c) in a manner that facilitates an audit.

(3) (a) A licensee may receive noncommission compensation when acting as a producer for the insured in connection with the actual sale or placement of insurance if:

(i) the producer and the insured have agreed on the producer's noncommission compensation; and

(ii) the producer has disclosed to the insured the existence and source of any other compensation that accrues to the producer as a result of the transaction.

(b) The disclosure required by this Subsection (3) shall:

(i) include the signature of the insured or prospective insured acknowledging the noncommission compensation;

(ii) clearly specify the amount or extent of the noncommission compensation and the existence and source of any other compensation; and

(iii) be provided to the insured or prospective insured before the performance of the service.

(c) The following additional noncommission compensation is authorized:

(i) compensation received by a producer of a compensated corporate surety who under procedures approved by a rule or order of the commissioner is paid by surety bond principal debtors for extra services;

(ii) compensation received by an insurance producer who is also licensed as a public adjuster under Section 31A-26-203, for services performed for an insured in connection with a claim adjustment, so long as the producer does not receive or is not promised compensation for aiding in the claim adjustment prior to the occurrence of the claim;

(iii) compensation received by a consultant as a consulting fee, provided the consultant complies with the requirements of Section 31A-23a-401; or

(iv) other compensation arrangements approved by the commissioner after a finding that they do not violate Section 31A-23a-401 and are not harmful to the public.

(d) Subject to Section 31A-23a-402.5, a producer for the insured may receive compensation from an insured through an insurer, for the negotiation and sale of a health benefit plan, if there is a separate written agreement between the insured and the licensee for the compensation. An insurer who passes through the compensation from the insured to the licensee under this Subsection (3)(d) is not providing direct or indirect compensation or commission compensation to the licensee.

(4) (a) For purposes of this Subsection (4), "producer" includes:

(i) a producer;

(ii) an affiliate of a producer; or

(iii) a consultant.

(b) A producer may not accept or receive any compensation from an insurer or third party administrator for the initial placement of a health benefit plan, other than a hospital confinement indemnity policy, unless prior to the customer's initial purchase of the health benefit plan the producer discloses in writing to the customer that the producer will receive compensation from the insurer or third party administrator for the placement of insurance, including the amount or type of compensation known to the producer at the time of the disclosure.

(c) A producer shall:

(i) obtain the customer's signed acknowledgment that the disclosure under Subsection (4)(b) was made to the customer; or

(ii) (A) sign a statement that the disclosure required by Subsection (4)(b) was made to the customer; and

(B) keep the signed statement on file in the producer's office while the health benefit plan placed with the customer is in force.

(d) (i) A licensee who collects or receives any part of the compensation from an insurer or third party administrator in a manner that facilitates an audit shall, while the health benefit plan placed with the customer is in force, maintain a copy of:

- (A) the signed acknowledgment described in Subsection (4)(c)(i); or
- (B) the signed statement described in Subsection (4)(c)(ii).
- (ii) The standard application developed in accordance with Section 31A-22-635 shall include a place for a producer to provide the disclosure required by this Subsection (4), and if completed, shall satisfy the requirement of Subsection (4)(d)(i).
- (e) Subsection (4)(c) does not apply to:
  - (i) a person licensed as a producer who acts only as an intermediary between an insurer and the customer's producer, including a managing general agent; or
  - (ii) the placement of insurance in a secondary or residual market.
- (5) This section does not alter the right of any licensee to recover from an insured the amount of any premium due for insurance effected by or through that licensee or to charge a reasonable rate of interest upon past-due accounts.
- (6) This section does not apply to bail bond producers or bail enforcement agents as defined in Section 31A-35-102.
- (7) A licensee may not receive noncommission compensation from an insured or enrollee for providing a service or engaging in an act that is required to be provided or performed in order to receive commission compensation, except for the surplus lines transactions that do not receive commissions.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

**31A-23a-502. Controlled business, except as to title insurance.**

- (1) As used in this section, "controlled business" means insurance procured by:
  - (a) an insurance producer who is a natural person upon the life, person, or property of himself, his relative within the second degree by blood or marriage, his employer, employees, or organization; or
  - (b) an insurance producer that is an organization upon its own property or upon the life, person, or property of its partners, shareholders, directors, or employees, or their relatives within the second degree by blood or marriage.
- (2) No producer may receive any compensation from an insurer for effecting insurance upon controlled business unless during the preceding 12 months the producer had effected other insurance with aggregate premiums exceeding the premiums on the controlled business.
- (3) This section does not apply to title insurance.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-503. Controlled business in title insurance.**

- (1) As used in this section:
  - (a) "Associate" means any:
    - (i) business organized for profit in which a person who refers title business is a director, officer, partner, or employee;
    - (ii) spouse or relative within the second degree by blood or marriage of a person who refers title business, who is a natural person;
    - (iii) employee of a person who refers title business; or

(iv) person with whom a person who refers title business or any associate of that title insurer, individual title insurance producer, or agency title insurance producer has any agreement, arrangement, or understanding, or pursues any course of conduct, designed to avoid the provisions of this chapter.

(b) "Controlled business" means that portion of the title insurance business of a title insurer, individual title insurance producer, or agency title insurance producer in this state that is referred to it by all those producers of title business who have a financial interest in the title insurer, individual title insurance producer, or agency title insurance producer and by all associates of those producers. Business is referred if there is influence over the selection of the person with whom the business is placed.

(c) "A person who refers title business" includes any person engaged in this state in a business of:

- (i) buying or selling interests in real property;
- (ii) making loans secured by interests in real property; or
- (iii) acting as a representative or employee of a person who buys or sells any interest in real property or who lends or borrows money with interest as security, other than acting as a licensed title insurer, individual title insurance producer, or agency title insurance producer doing the business of title insurance.

(d) "Financial interest" means any legal or beneficial interest that together with other interests entitles the holder to more than 1% of the net profits or net worth of the business in which the interest is held.

(2) A title insurer, individual title insurance producer, or agency title insurance producer or person having a financial interest in a title insurer, individual title insurance producer, or agency title insurance producer may not knowingly be a party to or knowingly permit to continue in any arrangement in which the title insurer, individual title insurance producer, or agency title insurance producer, or person knows or has reason to believe that any person who refers title business has or will have, directly or indirectly, a financial interest in the title insurer, individual title insurance producer, or agency title insurance producer, if it reasonably appears that a substantial factor in the person who refers title business owning or acquiring the financial interest is the expected realization of financial profit or gain derived in whole or in part from controlled business.

(3) A title insurer may not appoint or knowingly continue its authorization of any individual title insurance producer or agency title insurance producer in which the company knows or has reason to believe that any person who refers title business has or will have, directly or indirectly, a financial interest, if it reasonably appears that a substantial factor in the person who refers title business owning or acquiring the financial interest is the person's expected realization of financial profit or gain derived in whole or part from controlled business.

(4) (a) If for any calendar quarter, the gross operating revenues of a title insurer, individual title insurance producer, or agency title insurance producer derived from all sources of controlled business in this state amount to more than 1/3 of its gross operating revenues from all other sources of its business of title insurance in this state, it is presumed that the expected realization of financial profit or gain derived in whole or in part from controlled business was a substantial factor in the ownership of financial interest in the title insurer, individual title insurance producer, or agency title insurance

producer.

(b) The title insurer, individual title insurance producer, or agency title insurance producer has the burden of overcoming the presumption described in Subsection (4)(a).

(c) This Subsection (4) does not authorize any controlled business if a violation of the standards set forth in Subsection (2) or (3) exists.

(5) A title insurer, individual title insurance producer, or agency title insurance producer may not accept any order for the business of title insurance that it knows or has reason to believe constitutes controlled business, unless it records and maintains in its permanent records on forms prescribed by the commissioner the facts relating to the transactions.

(6) An applicant for qualification as a title insurer, individual title insurance producer, or agency title insurance producer may not be granted a license if it reasonably appears that the expected realization of financial profit or gain to be derived in whole or in part from controlled business is or will be a substantial factor in the applicant's plan of operation or in the ownership or acquisition of financial interests in the applicant by any person who refers title business.

(7) Each title insurer, individual title insurance producer, and agency title insurance producer shall maintain permanent records relating to its controlled business on forms prescribed by the commissioner.

(8) (a) Each title insurer and agency title insurance producer shall file annually with the commissioner, on forms prescribed by the commissioner, reports setting forth:

(i) the names and addresses of any persons owning a financial interest in the title insurer or agency title insurance producer as of the last day of the calendar year, who are known or reasonably believed by the title insurer or agency title insurance producer to be a person who refers title business; and

(ii) a summary compiled from the title insurer's or agency title insurance producer's records of the controlled business, sufficient to inform the commissioner and the Title and Escrow Commission as to the proportion of the title insurer's or agency title insurance producer's gross operating revenues attributable to controlled business during the preceding calendar year.

(b) The reports shall be filed with the reports required under Section 31A-23a-413 and shall contain the certification of an officer of the title insurer or agency title insurance producer that the information contained in them is true to the best of the officer's knowledge, information, and belief. Upon filing, the reports are public records.

(c) A report filed pursuant to Subsection (8)(a) is subject to review by the Title and Escrow Commission.

(9) An attorney who is also a licensed individual title insurance producer and who issues as producer a policy of title insurance to a client on behalf of whom the attorney is also acting as an attorney and who, in so doing, acts consistently with the applicable ethical standards of the Utah State Bar pertaining to the billing and receipt of legal fees and the receipt of a commission on a policy of title insurance is not, without more, considered to be engaged in controlled business.

Amended by Chapter 319, 2013 General Session

**31A-23a-504. Sharing commissions.**



(1) (a) Except as provided in Subsection 31A-15-103(3), a licensee under this chapter or an insurer may only pay consideration or reimburse out-of-pocket expenses to a person if the licensee knows that the person is licensed under this chapter as to the particular type of insurance to act in Utah as:

- (i) a producer;
- (ii) a limited line producer;
- (iii) a consultant;
- (iv) a managing general agent; or
- (v) a reinsurance intermediary.

(b) A person may only accept commission compensation or other compensation as a person described in Subsections (1)(a)(i) through (v) that is directly or indirectly the result of an insurance transaction if that person is licensed under this chapter to act as described in Subsection (1)(a).

(2) (a) Except as provided in Section 31A-23a-501, a consultant may not pay or receive a commission or other compensation that is directly or indirectly the result of an insurance transaction.

(b) A consultant may share a consultant fee or other compensation received for consulting services performed within Utah only:

- (i) with another consultant licensed under this chapter; and
- (ii) to the extent that the other consultant contributed to the services performed.

(3) This section does not prohibit:

(a) the payment of renewal commissions to former licensees under this chapter, former Title 31, Chapter 17, or their successors in interest under a deferred compensation or agency sales agreement;

(b) compensation paid to or received by a person for referral of a potential customer that seeks to purchase or obtain an opinion or advice on an insurance product if:

- (i) the person is not licensed to sell insurance;
- (ii) the person does not sell or provide opinions or advice on the product; and
- (iii) the compensation does not depend on whether the referral results in a purchase or sale; or

(c) the payment or assignment of a commission, service fee, brokerage, or other valuable consideration to an agency or a person who does not sell, solicit, or negotiate insurance in this state, unless the payment would constitute an inducement or commission rebate under Section 31A-23a-402 or 31A-23a-402.5.

(4) (a) In selling a policy of title insurance, sharing of commissions under Subsection (1) may not occur if it will result in:

- (i) an unlawful rebate;
- (ii) compensation in connection with controlled business; or
- (iii) payment of a forwarding fee or finder's fee.

(b) A person may share compensation for the issuance of a title insurance policy only to the extent that the person contributed to the search and examination of the title or other services connected with the title insurance policy.

(5) This section does not apply to:

(a) a bail bond producer or bail enforcement agent as defined in Section 31A-35-102 and as described in Subsection 31A-23a-106(2)(c);

(b) a travel retailer registered pursuant to Part 9, Travel Insurance Act; or  
(c) a nonlicensed individual employee or authorized representative of a licensed limited line producer who holds one or more of the following limited lines of authority as described in Subsection 31A-23a-106(2)(c):

- (i) car rental related insurance;
- (ii) self-service storage insurance;
- (iii) portable electronics insurance; or
- (iv) travel insurance.

Amended by Chapter 277, 2014 General Session

**31A-23a-505. Benefit plans for producers.**

An authorized insurer may establish retirement, insurance, and other benefit plans for producers on a basis approved by the commissioner.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-601. Licensure.**

(1) A person, firm, association, or corporation may not act in the capacity of managing general agent with respect to risks located in this state for an insurer licensed in this state unless the person is a licensed producer in this state.

(2) A person, firm, association, or corporation may not act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless the person is licensed as a producer in this state pursuant to this chapter. The license may be a nonresident license.

(3) The commissioner may require a bond in an amount he finds acceptable for the protection of each insurer represented.

(4) The commissioner may require the managing general agent to maintain an errors and omissions policy or other security acceptable to the commissioner.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-602. Required contract provisions.**

A person, firm, association, or corporation acting in the capacity of a managing general agent may not place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party, and where both parties share responsibility for a particular function, the contract specifies the division of shared responsibilities. The written contract shall contain the following minimum provisions:

(1) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination.

(2) The managing general agent will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer at least monthly.

(3) All funds collected for the account of an insurer will be held by the managing

general agent in a fiduciary capacity in a bank which is insured by the FDIC. This account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months estimated claims payments and allocated loss adjustment expenses.

(4) Separate records of business written by the managing general agent shall be maintained. The insurer shall have access and the right to copy all accounts and records related to its business and shall have access to all books, bank accounts, and records of the managing general agent. The records shall be retained according to Section 31A-23a-412 and shall be kept in a form usable by the insurer and the commissioner.

(5) The contract may not be assigned in whole or part by the managing general agent.

(6) The insurer shall have the right to cancel or nonrenew any policy of insurance subject to the applicable laws and rules. The contract shall contain appropriate underwriting guidelines including:

- (a) the maximum annual premium volume;
- (b) the basis of the rates to be charged;
- (c) the types of risks which may be written;
- (d) maximum limits of liability;
- (e) applicable exclusions;
- (f) territorial limitations;
- (g) policy cancellation provisions; and
- (h) the maximum policy period.

(7) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(a) All claims shall be reported to the company in a timely manner.

(b) A copy of the claim file shall be sent to the insurer at its request, or as soon as it becomes known that the claim:

- (i) has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the company;
- (ii) involves a coverage dispute;
- (iii) may exceed the managing general agent's claims settlement authority;
- (iv) is open for more than six months; or
- (v) is closed by payment the lesser of an amount set by the commissioner or an amount set by the company.

(c) All claim files will be the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer, the files become the sole property of the insurer or its estate. The managing general agent shall have reasonable access to and the right to copy the files on a timely basis.

(d) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

(8) Where electronic claims files are in existence, the contract shall address the timely transmission of the data.

(9) If the contract provides for a sharing of interim profits by the managing

general agent, and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves, controlling claim payments, or in any other manner, interim profits may not be paid to the managing general agent until one year after they are earned for property insurance business, and five years after they are earned on casualty business, but not until the profits have been verified by a review conducted pursuant to Section 31A-23a-603.

(10) The managing general agent may not:

(a) bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules;

(b) commit the insurer to participate in insurance or reinsurance syndicates;

(c) appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which the producer is appointed;

(d) without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which may not exceed 1% of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;

(e) collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer; if prior approval is given, a report shall be promptly forwarded to the insurer;

(f) permit its subproducer to serve on the insurer's board of directors;

(g) jointly employ an individual who is employed with the insurer; or

(h) appoint a submanaging general agent.

Amended by Chapter 297, 2011 General Session

### **31A-23a-603. Duties of insurers.**

(1) The insurer shall have on file an independent financial examination, in a form acceptable to the commissioner, of each managing general agent with which the insurer has done business.

(2) (a) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent.

(b) The requirement of Subsection (2)(a) is in addition to any other required loss reserve certification.

(3) The insurer shall at least semiannually conduct an on-site review of the underwriting and claims processing operations of the managing general agent.

(4) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who may not be affiliated with the managing general agent.

(5) (a) Within 30 days after entering into or terminating a contract with a managing general agent, the insurer shall provide written notification of the appointment or termination to the commissioner.

- (b) A notice of appointment of a managing general agent shall include:
  - (i) a statement of duties that the applicant is expected to perform on behalf of the insurer;
  - (ii) the lines of insurance for which the applicant is to be authorized to act; and
  - (iii) any other information the commissioner may request.
- (6) (a) An insurer shall review the insurer's books and records each quarter to determine if any producer, as defined in Section 31A-1-301, has become a managing general agent as defined in Section 31A-23a-102.
- (b) If the insurer determines that a producer has become a managing general agent:
  - (i) the insurer shall promptly notify the producer and the commissioner of the determination; and
  - (ii) the insurer and producer shall fully comply with the provisions of this chapter within 30 days.
- (7) (a) An insurer may not appoint officers, directors, employees, subproducers, or controlling shareholders of the insurer's managing general agents to the insurer's board of directors.
- (b) This Subsection (7) does not apply to relationships governed by:
  - (i) Chapter 16, Insurance Holding Companies; or
  - (ii) Chapter 23a, Part 7, Producer Controlled Insurers, if it applies.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-604. Examination authority.**

The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined as if it were the insurer.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-605. Penalties and liabilities.**

- (1) If the commissioner finds after a hearing that any person has violated any provision of this part, the commissioner may order:
  - (a) for each separate violation, a penalty in an amount of \$5,000;
  - (b) revocation or suspension of the producer's license; and
  - (c) the managing general agent to reimburse the insurer, the rehabilitator, or liquidator of the insurer for any losses incurred by the insurer caused by the managing general agent's violation.
- (2) Nothing contained in this section affects the right of the commissioner to impose any other penalties provided for in this title.
- (3) Nothing contained in this part is intended to, or in any manner limits or restricts the rights of policyholders, claimants, and auditors.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-701. Applicability.**

(1) This part applies to licensed insurers, as defined in Section 31A-23a-102, that are domiciled:

- (a) in this state; or
- (b) in a state that does not have a substantially similar law.

(2) All provisions of Chapter 16, Insurance Holding Companies, to the extent they are not superseded by this part, continue to apply to all parties within holding company systems subject to this part.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-702. Minimum standards.**

(1) This section applies if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than 5% of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the prior year.

(2) Notwithstanding Subsection (1), this section does not apply if:

(a) the controlling producer places insurance only with the controlled insurer, or only with the controlled insurer and members of the controlled insurer's holding company system, or with the controlled insurer's parent, affiliate, or subsidiary and receives no compensation based upon the amount of premiums written in connection with the insurance placed;

(b) the controlling producer accepts insurance placements only from nonaffiliated producers who are not controlling producers, and not directly from insureds; and

(c) the controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

(3) A controlled insurer may not accept business from a controlling producer and a controlling producer may not place business with a controlled insurer unless there is a written contract between the controlling producer and the insurer that specifies the responsibilities of each party and that has been approved by the board of directors of the insurer. The contract shall contain the following minimum provisions:

(a) The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination.

(b) The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling producer.

(c) The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer at least monthly. The due date shall be fixed so that premiums or premium installments collected shall be remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under the

contract.

(d) All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System FDIC, in accordance with applicable provisions of this title. However, funds of a controlling producer not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction.

(e) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer.

(f) The contract may not be assigned in whole or in part by the controlling producer.

(g) The controlled insurer shall provide the controlling producer with its underwriting standards, rules, procedures, and manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer.

(h) The contract shall state the rates and terms of the controlling producer's commissions, charges, or other fees and the purposes for those charges or fees. The rates of the commissions, charges, and other fees may not be greater than those applicable to comparable business and services placed with the controlled insurer by producers other than controlling producers. For purposes of Subsections (3)(g) and (h), examples of "comparable business and services" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

(i) If the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then the compensation may not be determined and paid until at least five years after the premiums on liability insurance are earned, and at least one year after the premiums are earned on any other insurance. In no event may the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to Subsection (5).

(j) The contract shall include a limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit to each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and may not accept business from the controlling producer if the limit is reached. The controlling producer may not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached.

(k) The controlling producer may negotiate but may not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer. However, the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in

effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(4) Each controlled insurer shall have an audit committee of the board of directors. The audit committee shall annually meet to review the adequacy of the insurer's loss reserves. The committee shall meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or any other independent loss reserve specialists acceptable to the commissioner.

(5) (a) In addition to any other required loss reserve certification, the controlled insurer shall file with the commissioner on April 1 of each year an opinion of an independent casualty actuary, or any other independent loss reserve specialist acceptable to the commissioner. The opinion shall report loss ratios for each line of business written and shall attest to the adequacy of loss reserves established for losses incurred and outstanding as of year-end on business placed by the producer including losses incurred but not reported.

(b) The controlled insurer shall annually report to the commissioner the amount of commissions paid to the producer, the percentage that amount represents of the net premiums written, and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance.

Amended by Chapter 297, 2011 General Session

### **31A-23a-703. Disclosure.**

The producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer. However, if the business is placed through a producer who is not a controlling producer, the controlling producer shall retain in his records a signed commitment from the noncontrolling producer that the noncontrolling producer is aware of the relationship between the insurer and the producer and that the noncontrolling producer has, or will, notify the insured.

Renumbered and Amended by Chapter 298, 2003 General Session

### **31A-23a-704. Penalties.**

(1) (a) If, after notice and opportunity to be heard, the commissioner finds that the controlling producer or any other person has not materially complied with this part, or any rule made or order issued under the part, the commissioner may order the controlling producer to cease placing business with the controlled insurer.

(b) If the commissioner finds that because of the material noncompliance that the controlled insurer or any policyholder of the controlled insurer has suffered any loss or damage, the commissioner may maintain a civil action or may intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or the commissioner may seek other appropriate relief.

(2) If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to Chapter 27a, Insurer Receivership Act, and the receiver appointed under that order believes that the controlling producer or any other person has not



materially complied with this part, or any rule made or order issued under this part, and the insurer suffered any loss or damage as a result of the noncompliance, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

(3) Nothing in this section affects the right of the commissioner to impose any other penalties provided for in this title.

(4) Nothing contained in this section is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors, or other third parties.

Amended by Chapter 309, 2007 General Session

**31A-23a-801. Licensure.**

(1) A person, firm, association, or corporation may not act as a reinsurance intermediary-broker in this state if the reinsurance intermediary-broker maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation unless:

(a) in this state, the reinsurance intermediary-broker is a licensed producer in this state; or

(b) in another state, the reinsurance intermediary-broker is a licensed producer in this state or another state having a licensing law substantially similar to this part, or the reinsurance intermediary-broker is licensed in this state as a nonresident reinsurance intermediary.

(2) A person, firm, association, or corporation may not act as a reinsurance intermediary-manager:

(a) for a reinsurer domiciled in this state, unless the reinsurance intermediary-manager is a licensed producer in this state;

(b) in this state, if the reinsurance intermediary-manager maintains an office either directly or as a member or employee of a firm or association, or as an officer, director, or employee of a corporation in this state, unless the reinsurance intermediary-manager is a licensed producer in this state; or

(c) in another state for a nondomestic insurer, unless the reinsurance intermediary-manager is a licensed producer in this state or another state having a licensing law substantially similar to this chapter, or the person is licensed in this state as a nonresident reinsurance intermediary.

(3) The commissioner may require a bond in an amount he finds acceptable for the protection of each reinsurer represented.

(4) (a) The commissioner may issue a reinsurance intermediary license to any person, firm, association, or corporation which has complied with the requirements of this chapter.

(i) Any license issued to a firm or association will authorize all the members of the firm or association, and any designated employees, to act as reinsurance intermediaries under the license. Each member, employee, or similar person shall be named in the application and any supplements to the application.

(ii) Any license issued to a corporation shall authorize all of the officers, directors, and any designated employees to act as reinsurance intermediaries on behalf of the corporation, and all authorized persons shall be named in the application and any

supplements to the application.

(b) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process in the manner, and with the same legal effect, provided for by this title for designation of service of process upon unauthorized insurers. The applicant also shall furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of every change in its designated agent for service of process, and the change does not become effective until acknowledged by the commissioner.

(5) The commissioner may refuse to issue a reinsurance intermediary license if he determines that the applicant, any one named on the application, or any member, principal, officer, or director of the applicant, is not trustworthy, or that any controlling person of the applicant is not trustworthy to act as a reinsurance intermediary, or that any of the persons named has given cause for revocation or suspension of the license, or has failed to comply with any prerequisite for the issuance of the license. Upon written request the commissioner will furnish a summary of the basis for his refusal to issue a license. The summary document shall be confidential.

(6) Licensed attorneys-at-law of this state when acting in their professional capacity as attorneys are exempt from this section.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-802. Required contract provisions -- Reinsurance intermediary-broker.**

Transactions between a reinsurance intermediary-broker and the insurer it represents in that capacity may only be entered into pursuant to a written authorization, which specifies the responsibilities of each party. The authorization shall, at a minimum, provide that the reinsurance intermediary-broker:

- (1) may have his authority terminated by the insurer at any time;
- (2) will render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to the reinsurance intermediary-broker, and that he will remit all funds due to the insurer within 30 days of receipt;
- (3) shall hold, in a fiduciary capacity, all funds collected for the insurer's account in a financial institution, which is a qualified United States financial institution;
- (4) will comply with Section 31A-23a-803;
- (5) will comply with the written standards established by the insurer for the cession or retrocession of all risks; and
- (6) will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-803. Books and records -- Reinsurance intermediary-broker.**

(1) For at least 10 years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-broker, he will keep a complete record for each transaction showing:

- (a) the type of contract, limits, underwriting restrictions, classes or risks, and territory;
- (b) the period of coverage, including the effective and expiration dates, cancellation provisions, and notice required of cancellation;
- (c) reporting and settlement requirements of balances;
- (d) the rate used to compute the reinsurance premium;
- (e) the names and addresses of assuming reinsurers;
- (f) the rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-broker;
- (g) related correspondence and memoranda;
- (h) proof of placement;
- (i) details regarding retrocessions handled by the reinsurance intermediary-broker, including the identity of retrocessionaires and percentage of each contract assumed or ceded;
- (j) financial records including premium and loss accounts; and
- (k) when the reinsurance intermediary-broker procures a reinsurance contract on behalf of a licensed ceding insurer:
  - (i) directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
  - (ii) if placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

(2) The insurer will have access and the right to copy and audit all accounts and records maintained by the reinsurance intermediary-broker related to its business in a form usable by the insurer.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-804. Duties of insurers utilizing the services of a reinsurance intermediary-broker.**

(1) An insurer may not engage the services of any person, firm, association, or corporation to act as a reinsurance intermediary-broker on its behalf unless the person is licensed as required by Subsection 31A-23a-801(1).

(2) An insurer may not employ an individual who is employed by a reinsurance intermediary-broker with which it transacts business, unless the reinsurance intermediary-broker is under common control with the insurer and subject to Title 31A, Chapter 16, Insurance Holding Companies.

(3) The insurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-broker with which it transacts business.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-805. Required contract provisions -- Reinsurance**

**intermediary-manager.**

Transactions between a reinsurance intermediary-manager and the reinsurer it represents in that capacity may only be entered into pursuant to a written contract, which specifies the responsibilities of each party, and which shall be approved by the reinsurer's board of directors. At least 30 days before the reinsurer assumes or cedes business through the producer, a true copy of the approved contract shall be filed with the commissioner for approval. The contract shall, at a minimum, provide or require the following:

(1) The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may immediately suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

(2) The reinsurance intermediary-manager will render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to the reinsurance intermediary-manager, and he shall remit all funds due under the contract to the reinsurer at least monthly.

(3) All funds collected for the reinsurer's account will be held by the reinsurance intermediary-manager in a fiduciary capacity in a financial institution which is a qualified United States financial institution. The reinsurance intermediary-manager may retain no more than three months estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate account for each reinsurer that it represents.

(4) For at least 10 years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, he shall keep a complete record for each transactions showing:

(a) the type of contract, limits, underwriting restrictions, classes of risks, and territory;

(b) period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;

(c) reporting and settlement requirements of balances;

(d) rates used to compute the reinsurance premium;

(e) names and addresses of reinsurers;

(f) rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager;

(g) related correspondence and memoranda;

(h) proof of placement;

(i) details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by Subsection 31A-23a-807(4), including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(j) financial records, including premium and loss accounts; and

(k) when the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer:

(i) directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) if placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

(5) The reinsurer will have access and the right to copy all accounts and records maintained by the reinsurance intermediary-manager which are related to its business, in a form usable by the reinsurer.

(6) The contract cannot be assigned in whole or in part by the reinsurance intermediary-manager.

(7) The reinsurance intermediary-manager will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.

(8) The contract shall set forth the rates, terms, and purposes of commissions, charges, and other fees which the reinsurance intermediary-manager may levy against the reinsurer.

(9) If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer:

(a) All claims will be reported to the reinsurer in a timely manner.

(b) A copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:

(i) has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;

(ii) involves a coverage dispute;

(iii) may exceed the reinsurance intermediary-manager claims settlement authority;

(iv) is open for more than six months; or

(v) is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer.

(c) All claim files will be the joint property of the reinsurer and reinsurance intermediary-manager. However, upon an order of liquidation of the reinsurer the files shall become the sole property of the reinsurer or its estate. The reinsurance intermediary-manager shall have reasonable access to and the right to copy the files on a timely basis.

(d) Any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager, or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

(10) If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, that the contract shall provide interim profits will not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business, or a later time period set by the commissioner for specified lines of insurance, and not until the adequacy of reserves on remaining claims has been verified pursuant to Subsection 31A-23a-807(3).

(11) The reinsurance intermediary-manager will annually provide the reinsurer with a statement of its financial condition prepared by an independent certified public

accountant.

(12) The reinsurer shall at least semi-annually conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary-manager.

(13) The reinsurance intermediary-manager will disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with the insurer pursuant to this contract.

(14) Within the scope of its actual or apparent authority the acts of the reinsurance intermediary-manager shall be considered to be the acts of the reinsurer on whose behalf it is acting.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-806. Prohibited acts.**

(1) The reinsurance intermediary-manager may not cede retrocessions on behalf of the reinsurer, except that the reinsurance intermediary-manager may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for facultative retrocessions. The guidelines shall include a list of reinsurers with which automatic agreements are in effect, and for each listed reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(2) The reinsurance intermediary-manager may not commit the reinsurer to participate in reinsurance syndicates.

(3) The reinsurance intermediary-manager may not appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which the producer is appointed.

(4) The reinsurance intermediary-manager may not, without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or 1% of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year.

(5) The reinsurance intermediary-manager may not collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report shall be promptly forwarded to the reinsurer.

(6) The reinsurance intermediary-manager may not jointly employ an individual who is employed by the reinsurer unless the reinsurance intermediary-manager is under common control with the reinsurer subject to Title 31A, Chapter 16, Insurance Holding Companies.

(7) The reinsurance intermediary-manager may not appoint a subreinsurance intermediary-manager.

Amended by Chapter 297, 2011 General Session

**31A-23a-807. Duties of reinsurers utilizing the services of reinsurance.**

(1) A reinsurer may not engage the services of any person, firm, association, or corporation to act as a reinsurance intermediary-manager on its behalf unless the

person is licensed as required by Subsection 31A-23a-801(2).

(2) The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-manager which the reinsurer has engaged, which shall be prepared by an independent certified public accountant in a form acceptable to the commissioner.

(3) If a reinsurance intermediary-manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary-manager. The actuary's opinion shall be in addition to any other required loss reserve certification.

(4) Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer, who may not be affiliated with the reinsurance intermediary-manager.

(5) Within 30 days of termination of a contract with a reinsurance intermediary-manager, the reinsurer shall provide written notification of the termination to the commissioner.

(6) A reinsurer may not appoint to its board of directors, any officer, director, employee, controlling shareholder, or subproducer of its reinsurance intermediary-manager. This subsection does not apply to relationships governed by Title 31A, Chapter 16, Insurance Holding Companies, or Chapter 23a, Part 7, Producer Controlled Insurers, if it applies.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-808. Examination authority.**

(1) A reinsurance intermediary shall be subject to examination by the commissioner. The commissioner shall have access to all books, bank accounts, and records of the reinsurance intermediary, which shall be kept in a form usable to the commissioner.

(2) A reinsurance intermediary-manager may be examined as if it were the reinsurer.

Renumbered and Amended by Chapter 298, 2003 General Session

**31A-23a-809. Penalties and liabilities.**

(1) A reinsurance intermediary, insurer, or reinsurer found by the commissioner, after a hearing conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to be in violation of any provisions of this title, shall:

(a) for each separate violation, pay a civil penalty in an amount not exceeding \$5,000;

(b) be subject to revocation or suspension of its license; and

(c) if a violation was committed by the reinsurance intermediary, the reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the violation.

(2) Nothing contained in this section affects the right of the commissioner to

impose any other penalties provided in this title.

(3) Nothing contained in this part is intended to, or in any manner limits or restricts the rights of policyholders, claimants, creditors, or other third parties; nor does it confer any rights to such persons.

Amended by Chapter 382, 2008 General Session

**31A-23a-901. Title.**

This part is known as the "Travel Insurance Act."

Enacted by Chapter 277, 2014 General Session

**31A-23a-902. Definitions.**

As used in this part, unless the context requires otherwise:

(1) "Limited lines travel insurance producer" means one of the following designated by an insurer as the travel insurance supervising entity as provided in Subsection 31A-23a-905(4):

(a) a licensed managing general agent or third party administrator; or

(b) a licensed insurance producer, including a limited lines producer.

(2) "Offer and disseminate" means:

(a) providing general information, including a description of the coverage and price;

(b) processing an application;

(c) collecting a premium; and

(d) performing activities that the state permits to be done by a person who is not licensed.

(3) (a) "Travel insurance" means insurance coverage for personal risks incident to planned travel, including:

(i) interruption or cancellation of a trip or event;

(ii) loss of baggage or personal effects;

(iii) damages to accommodations or rental vehicles; or

(iv) sickness, accident, disability, or death during travel.

(b) "Travel insurance" does not include a major medical plan that provides comprehensive medical protection for a traveler with a trip lasting six months or longer, including an individual working overseas or military personnel being deployed.

(4) "Travel retailer" means a business entity that makes, arranges, or offers travel services and may offer and disseminate travel insurance as a service to its customers on behalf of and under the direction of a limited lines travel insurance producer.

Enacted by Chapter 277, 2014 General Session

**31A-23a-903. Issuance of limited lines travel insurance producer license.**

Notwithstanding any other provision of this chapter:

(1) The commissioner may issue to an individual or business entity that has filed with the commissioner an application in a form and manner prescribed by the



commissioner a limited lines travel insurance producer license that authorizes the limited lines travel insurance producer to sell, solicit, or negotiate travel insurance through a licensed insurer.

(2) A limited lines travel insurance producer, and those registered under the license of the limited lines travel producer, are exempt from:

- (a) the examination requirements under Section 31A-23a-108; and
- (b) the continuing education requirements under Section 31A-23a-202.

Enacted by Chapter 277, 2014 General Session

#### **31A-23a-904. Travel retailers.**

Notwithstanding any other provision of this chapter, a travel retailer may offer and disseminate travel insurance under a limited lines travel insurance producer business entity license only if the following conditions are met:

(1) The limited lines travel insurance producer or travel retailer shall provide to a purchaser of travel insurance:

- (a) a description of the material terms or the actual material terms of the insurance coverage;
- (b) a description of the process for filing a claim;
- (c) a description of the review or cancellation process for the travel insurance policy; and
- (d) the identity and contact information of the insurer and limited lines travel insurance producer.

(2) (a) At the time of licensure, the limited lines travel insurance producer shall establish and maintain a register on a form prescribed by the commissioner of each travel retailer that offers travel insurance on the limited lines travel insurance producer's behalf.

(b) The limited lines travel insurance producer shall maintain and update the register annually and include:

- (i) the name, address, and contact information of the travel retailer;
- (ii) the name, address, and contact information of an officer or person who directs or controls the travel retailer's operations; and
- (iii) the travel retailer's federal tax identification number.

(c) The limited lines travel insurance producer shall submit the register to the department upon reasonable request by the department.

(d) The limited lines travel insurance producer shall certify that the travel retailer registered with the limited lines travel insurance producer has not violated 18 U.S.C. Sec. 1033.

(3) The limited lines travel insurance producer shall designate one of its employees who is a licensed individual travel insurance producer as the designated responsible producer who is responsible for the limited lines travel insurance producer's compliance with the travel insurance laws and rules of the state.

(4) The designated responsible producer, president, secretary, treasurer, and any other officer or person who directs or controls the limited lines travel insurance producer's insurance operations shall comply with the fingerprinting requirements applicable to insurance producers in the resident state of the limited lines travel

insurance producer.

(5) The limited lines travel insurance producer shall pay all applicable insurance producer licensing fees imposed in accordance with Section 31A-3-103.

(6) The limited lines travel insurance producer shall require an employee or authorized representative of a travel retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or training that may be subject to review by the commissioner. The training materials shall, at a minimum, contain instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective customers.

Enacted by Chapter 277, 2014 General Session

**31A-23a-905. Offering or disseminating travel insurance.**

(1) A travel retailer offering or disseminating travel insurance shall make available to a prospective purchaser a brochure or other written material that:

(a) provides the identity and contact information of the insurer and the limited lines travel insurance producer;

(b) explains that the purchase of travel insurance is not required to purchase any other product or service from the travel retailer; and

(c) explains that an unlicensed travel retailer is permitted to provide general information about the insurance offered by the travel retailer, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the terms and conditions of the insurance offered by the travel retailer or to evaluate the adequacy of the prospective purchaser's existing insurance coverage.

(2) A travel retailer's employee or authorized representative who is not licensed as an insurance producer may not:

(a) evaluate or interpret the technical terms, benefits, and conditions of the offered travel insurance coverage;

(b) evaluate or provide advice concerning a prospective purchaser's existing insurance coverage; or

(c) hold the person out as a licensed insurer, licensed producer, or insurance expert.

(3) Notwithstanding any other provision of this chapter, a travel retailer whose insurance-related activities, and those of its employees and authorized representatives, are limited to offering and disseminating travel insurance on behalf of and under the direction of a limited lines travel insurance producer meeting the conditions stated in this part, is authorized to do so and receive related compensation for services, upon registration of the limited lines travel insurance producer as described in Subsection 31A-23a-904(2).

(4) As the insurer designee, the limited lines travel insurance producer is responsible for the acts of the travel retailer and shall use responsible means to ensure compliance by the travel retailer under this part.

Enacted by Chapter 277, 2014 General Session

**31A-23a-906. Travel insurance.**

Travel insurance may be provided under an individual policy or under a group or master policy.

Enacted by Chapter 277, 2014 General Session

**31A-23a-907. Market conduct and penalties.**

A limited lines travel insurance producer and any travel retailer offering and disseminating travel insurance under the limited lines travel insurance producer license are subject to Sections 31A-2-308, 31A-23a-402, and 31A-23a-402.5.

Enacted by Chapter 277, 2014 General Session